

Exhibit Q
(Redacted)

<p style="text-align: center;">UNITED STATES DISTRICT COURT for the Northern District of Iowa</p> <p>***** NUSTAR FARMS, LLC, et al., Plaintiff, vs. Civil Action No. 5:20-cv-04003-CJW-MAR RYAN LIZZA, et al., (COUNSELS' EYES ONLY) Defendant. *****</p> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF AMANDA J. BAHENA</p> <p style="text-align: center;">Taken at WOODS, FULLER, SHULTZ & SMITH, P.C. 300 South Phillips Avenue, Suite 300 Sioux Falls, South Dakota February 22, 2022</p>	<p style="text-align: right;">3</p> <p>1 WITNESSES</p> <p>2 AMANDA J. BAHENA Page</p> <p>3 Examination by Ms. Hauser 5, 174 4 Examination by Mr. Biss 171</p> <p>5</p> <p>6 EXHIBITS Page</p> <p>7 No. Description Page</p> <p>7 120 Email dated 10-2-18 from Lori Nunes to 10 8 Amanda J. Bahena</p> <p>8 121 Letter dated 10-12-18 from Amanda J. 56 9 Bahena to NuStar Farms, LLC</p> <p>10 122 Form I-9, with Attachment 81</p> <p>11 123 Form I-9, with Attachment 84</p> <p>12 124 Form I-9 85</p> <p>13 125 Form I-9, with Attachment 99</p> <p>14 126 Form I-9, with Attachments 106</p> <p>15 127 Form I-9 106</p> <p>16 128 Form I-9 110</p> <p>17 129 Form I-9, with Attachment 114</p> <p>18 130 Form I-9 114</p> <p>19 131 Form I-9, with Attachment 122</p> <p>20 132 Form I-9 122</p> <p>21 133 Form I-9, with Attachments 132</p> <p>22 134 Form I-9 132</p> <p>23 135 Copies of Invoices 155</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p>1 A P P E A R A N C E S</p> <p>2 KRISTEN HAUSER, ESQ.</p> <p>3 NATHANIEL S. BOYER, ESQ.</p> <p>4 THE HEARST CORPORATION 300 West 57th Street New York, New York 10019</p> <p>5 APPEARING ON BEHALF OF THE DEFENDANT.</p> <p>6 SCOTT WRIGHT, ESQ.</p> <p>7 FAEGRE, DRINKER, BIDDLE & REATH, LLP 801 Grand Avenue 33rd Floor Des Moines, Iowa 50309</p> <p>9 APPEARING ON BEHALF OF THE DEFENDANT.</p> <p>10 STEVEN K. HUFF, ESQ.</p> <p>11 MARLOW, WOODWARD & HUFF, PLLC 200 West 3rd Street Yankton, South Dakota 57078</p> <p>12 APPEARING ON BEHALF OF THE DEPONENT.</p> <p>13 STEVEN S. BISS, ESQ.</p> <p>14 LAW OFFICES OF STEVEN S. BISS 300 West Main Street Suite 102 Charlottesville, Virginia 22903</p> <p>15 APPEARING REMOTELY ON BEHALF OF THE PLAINTIFF.</p> <p>16</p> <p>17</p> <p>18 Also Present: Anthony Nunes, Jr. (Appearing Remotely)</p> <p>19 Lori Nunes (Appearing Remotely)</p> <p>20 Cody Henderson (Videographer)</p> <p>21 (Appearing Remotely)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 (Deposition of AMANDA J. BAHENA, taken before</p> <p>2 me, Cindy K. Pfingston, a Registered Professional</p> <p>3 Reporter and a Notary Public in and for the County</p> <p>4 of Pennington, State of South Dakota, at 9:30 a.m.</p> <p>5 Central Time, on the 22nd day of February, 2022,</p> <p>6 pursuant to Notice and/or Stipulation, at the Law</p> <p>7 Offices of Woods, Fuller, Shultz & Smith, P.C., in</p> <p>8 the City of Sioux Falls, County of Minnehaha, State</p> <p>9 of South Dakota, counsel appearing on behalf of the</p> <p>10 respective parties as hereinbefore indicated.)</p> <p>11 * * * * *</p> <p>12 THE VIDEOGRAPHER: Good morning. The time is</p> <p>13 9:30 a.m. Central Time on Tuesday, February 22nd,</p> <p>14 2022.</p> <p>15 This begins Media Unit Number 1 of the video</p> <p>16 recorded Zoom deposition of Amanda --</p> <p>17 Is it Bathena?</p> <p>18 THE DEPONENT: Bahena.</p> <p>19 THE VIDEOGRAPHER: Bahena. On one piece of</p> <p>20 paper it's "Bathena".</p> <p>21 -- Amanda Bahena, to be heard in the matter of</p> <p>22 NuStar Farms, LLC, et al. versus Ryan Lizza, et al.,</p> <p>23 to be heard in the United States District Court for</p> <p>24 the Northern District of Iowa, Case Number</p> <p>25 5:20-cv-04003-CJW-MAR.</p>

<p style="text-align: right;">5</p> <p>1 My name is Cody Henderson. I'm the</p> <p>2 videographer. Cindy Pfingston is the court</p> <p>3 reporter.</p> <p>4 Would Counsel please state their appearance for</p> <p>5 the record.</p> <p>6 MR. BISS: I'm Steve Biss. I represent the</p> <p>7 plaintiffs, and in the combined action I represent</p> <p>8 Devin Nunes.</p> <p>9 MS. HAUSER: Kristen Hauser. I represent the</p> <p>10 defendants in both actions. With me are Nathaniel</p> <p>11 Boyer, also from the Hearst Office of General</p> <p>12 Counsel, and Scott Wright from the Faegre firm.</p> <p>13 THE VIDEOGRAPHER: Beautiful.</p> <p>14 And we'll turn it over to the court reporter to</p> <p>15 swear the witness.</p> <p>16 MR. HUFF: Sure. Also Steve Huff here on</p> <p>17 Ms. Bahena's behalf.</p> <p>18 THE VIDEOGRAPHER: Thank you.</p> <p>19 MR. HUFF: You're welcome.</p> <p>20 AMANDA J. BAHENA,</p> <p>21 a witness being first duly sworn, was examined and</p> <p>22 testified on her oath as follows:</p> <p>23 E X A M I N A T I O N</p> <p>24 BY MS. HAUSER:</p> <p>25 Q Good morning, Ms. Bahena.</p>	<p style="text-align: right;">7</p> <p>1 appeal.</p> <p>2 So I just wanted to get those on the record</p> <p>3 before you begin. Sorry for interrupting.</p> <p>4 MS. HAUSER: No, no, understood. And by your</p> <p>5 objection, I understand you're not going to object</p> <p>6 question by question.</p> <p>7 MR. BISS: Yeah, that's a good -- that's a</p> <p>8 pretty good point.</p> <p>9 The other thing that -- that I'm concerned</p> <p>10 about, um, is the -- is -- is any attempt to elicit,</p> <p>11 um, opinion testimony from -- from this witness.</p> <p>12 Um, can you and I agree, so that -- that I don't</p> <p>13 have to keep objecting, can you and I agree that any</p> <p>14 objections as to, um, opinion testimony are, I don't</p> <p>15 need to object every time, that they're all</p> <p>16 preserved for the record? Or do you want me just to</p> <p>17 object every time I -- I find -- I find a question</p> <p>18 objectionable?</p> <p>19 MS. HAUSER: I think you should make your</p> <p>20 objections on the record as to questions, as to</p> <p>21 particular questions. I was just understanding your</p> <p>22 global objection to the -- to the Court's order as</p> <p>23 something you were not going to object to going</p> <p>24 through.</p> <p>25 Does that make sense?</p>
<p style="text-align: right;">6</p> <p>1 A Good morning.</p> <p>2 Q Would you please state your full name for the</p> <p>3 record?</p> <p>4 A My full legal name is Amanda Joy Bahena Arteaga.</p> <p>5 Q Thank you. And are you currently employed?</p> <p>6 A Yes.</p> <p>7 Q And where are you employed?</p> <p>8 A Woods, Fuller, Shultz & Smith, PC, law firm.</p> <p>9 Q And are you --</p> <p>10 MR. BISS: Kristen, just -- Kristen, just</p> <p>11 before you go any further, I just want to put on the</p> <p>12 record two matters.</p> <p>13 Number one is I'm going to mark this entire</p> <p>14 deposition "Counsels' Eyes Only" pursuant to the</p> <p>15 protective order that has been entered in the NuStar</p> <p>16 case. I'm not sure it's been entered in the Devin</p> <p>17 Nunes case, but regardless, I'm going to mark the</p> <p>18 deposition as "Counsels' Eyes Only". That's number</p> <p>19 one.</p> <p>20 Number two, I'm going to renew our objection to</p> <p>21 the taking of the deposition, to the asking of any</p> <p>22 questions on the grounds of attorney/client</p> <p>23 privilege. However, I recognize that the judge has</p> <p>24 overruled that objection, so I'm merely stating that</p> <p>25 objection to preserve it in the event we need to</p>	<p style="text-align: right;">8</p> <p>1 MR. BISS: It does. I'll just object as I see</p> <p>2 fit. Thank you.</p> <p>3 MS. HAUSER: Thanks.</p> <p>4 Q (By Ms. Hauser) Ms. Bahena, are you a shareholder in</p> <p>5 the Woods Fuller firm?</p> <p>6 A Yes, I am.</p> <p>7 Q And when -- how long have you been a shareholder,</p> <p>8 approximately?</p> <p>9 A That's a good question. I don't know. Um, let's</p> <p>10 see, I would say approximately three years, maybe</p> <p>11 four.</p> <p>12 Q Have you ever been deposed before?</p> <p>13 A No.</p> <p>14 Q Have you taken depositions before?</p> <p>15 A Yes.</p> <p>16 Q Um, you understand that it will help the court</p> <p>17 reporter if you and I don't speak over each other</p> <p>18 today and you wait for my question to be finished</p> <p>19 before you answer?</p> <p>20 A Yes.</p> <p>21 Q Is there anything, any reason you believe you can't</p> <p>22 testify truthfully today?</p> <p>23 A No.</p> <p>24 Q And today you're appearing pursuant to a subpoena?</p> <p>25 A Correct.</p>

<p style="text-align: right;">9</p> <p>1 Q And do you have -- what is your understanding of the</p> <p>2 lawsuit pursuant -- excuse me, what is your</p> <p>3 understanding of the lawsuit that you're giving</p> <p>4 testimony in today?</p> <p>5 MR. BISS: Object to the form.</p> <p>6 A Um --</p> <p>7 THE DEPONENT: Should I answer?</p> <p>8 MR. HUFF: Yeah, yeah.</p> <p>9 A I'm not very familiar with the lawsuit. I've seen</p> <p>10 some of the pleadings, mostly related to whether or</p> <p>11 not privilege was an issue, but I have not been</p> <p>12 following it closely at all. My understanding is</p> <p>13 there was an article published by your clients that</p> <p>14 now the Nunes family is suing your clients for libel</p> <p>15 or related issues there. Um --</p> <p>16 Q Have you -- so you've looked at some of the</p> <p>17 pleadings; is that correct?</p> <p>18 A Some, not very many.</p> <p>19 Q Um, and you're -- and you said you're aware of the</p> <p>20 Court's order permitting this deposition to happen?</p> <p>21 A Yes.</p> <p>22 Q And did you sign the protective order at some point?</p> <p>23 A I did.</p> <p>24 Q And have you read any of the Eighth Circuit's</p> <p>25 opinions in the related matter concerning</p>	<p style="text-align: right;">11</p> <p>1 document produced by Plaintiffs bearing the Bates</p> <p>2 number PX4139 through PX4148.</p> <p>3 And, Steve, I've marked it as 120 because I</p> <p>4 believe that gives us a gap from the last</p> <p>5 deposition. It makes looking up the exact number --</p> <p>6 MR. BOYER: Yeah, let's go with 120. I'm</p> <p>7 almost positive that's fine.</p> <p>8 MR. BISS: So we're going to call it 120?</p> <p>9 MS. HAUSER: I think so, yeah.</p> <p>10 MR. BOYER: Yes, let's do that.</p> <p>11 MR. BISS: Okay.</p> <p>12 Q (By Ms. Hauser) And, Ms. Bahena, the court reporter</p> <p>13 just handed you a document, Exhibit 120. Does this</p> <p>14 refresh your recollection that Mrs. Lori Nunes sent</p> <p>15 you a different article by e-mail?</p> <p>16 A Yes. I think we, over the phone call she mentioned</p> <p>17 the first e-mail, the esquire, or, sorry, she</p> <p>18 mentioned the first esquire article, and I was able</p> <p>19 to easily find that online. And then she e-mailed</p> <p>20 me a follow-up piece from a different -- from the</p> <p>21 Federalist later.</p> <p>22 Q And do you recall when Mrs. Nunes first called you</p> <p>23 about the article -- the Esquire article?</p> <p>24 A I don't recall the date.</p> <p>25 Q Was it -- do you know whether it was before or after</p>
<p style="text-align: right;">10</p> <p>1 congressman, former congressman Devin Nunes' libel</p> <p>2 case?</p> <p>3 A Not that I recall.</p> <p>4 Q Did you read the esquire article that is the subject</p> <p>5 of this lawsuit?</p> <p>6 A I -- yes. I -- if it's the article that I'm</p> <p>7 thinking of, um, Lori Nunes or someone had initially</p> <p>8 sent that to me shortly after the publication, and I</p> <p>9 read it at that time. Yes.</p> <p>10 MS. HAUSER: So I've -- and for Mr. Biss, we've</p> <p>11 handed the witness what has been previously marked</p> <p>12 as plaintiff's exhibit 1.</p> <p>13 A Yes, I read this article.</p> <p>14 Q (By Ms. Hauser) And do you recall that Mrs. Nunes</p> <p>15 sent you this article?</p> <p>16 A I believe she e-mailed it to me, if I recall</p> <p>17 correctly. It may have been that she told me about</p> <p>18 it and I found it myself.</p> <p>19 MS. HAUSER: I'm waiting on a number.</p> <p>20 MR. BOYER: Yeah.</p> <p>21 MS. HAUSER: Exhibit 120?</p> <p>22 MR. BOYER: Exhibit 120, yeah.</p> <p>23 Let's mark this as Defendants' Exhibit 120.</p> <p>24 (Exhibit 120 marked for identification.)</p> <p>25 MS. HAUSER: Um, and for the record, this is a</p>	<p style="text-align: right;">12</p> <p>1 the article was published?</p> <p>2 A After. I found it online.</p> <p>3 Q And if I represented to you that the article was</p> <p>4 published on or around September 30th, 2018 online,</p> <p>5 um, do you recall whether Mrs. Nunes called you that</p> <p>6 day or the subsequent day or --</p> <p>7 A I don't remember. It would have been after it was</p> <p>8 available online because I would have found it</p> <p>9 online.</p> <p>10 Q Have you read any other news articles -- have you</p> <p>11 read any news articles about this lawsuit?</p> <p>12 A I couldn't say with certainty. When they were</p> <p>13 talking about taking my deposition, I assume I --</p> <p>14 I -- yes, I Googled something, and I don't remember</p> <p>15 if anything came up about the lawsuit or not.</p> <p>16 Nothing in depth.</p> <p>17 Q Have you discussed this lawsuit with anyone other</p> <p>18 than your lawyers?</p> <p>19 A I -- just my husband that I had to get my deposition</p> <p>20 taken.</p> <p>21 Q Have you reviewed any social media posts about this</p> <p>22 lawsuit or the article?</p> <p>23 A Not that I remember. I don't have Twitter or</p> <p>24 Facebook, so ...</p> <p>25 MR. BISS: Good for you. Good for you.</p>

<p style="text-align: right;">13</p> <p>1 Q (By Ms. Hauser) Have you discussed this lawsuit or 2 any of the claims with any of the Nunes?</p> <p>3 A No. And I should correct, I -- I have Facebook. My 4 account is deactivated, if that becomes a thing.</p> <p>5 MR. HUFF: My Space?</p> <p>6 THE DEPONENT: Maybe I have an account 7 somewhere. Um...</p> <p>8 Q (By Ms. Hauser) Generally, are you able -- would you 9 please describe your law practice at Woods Fuller?</p> <p>10 A Yes. I have a combination of principally 11 immigration law and estate planning. Depending on 12 the political environment and the time of the year 13 impacts how much time I spend on each.</p> <p>14 Being in a small town, I also do some corporate 15 work, um, and a little bit of this and that, but 16 generally it's estate planning and immigration law.</p> <p>17 Q And, um, when you mentioned, um, the political 18 environment -- when you mentioned that the political 19 environment affects how much of, you devote to your 20 practice to one area or the other, what did you mean 21 by that?</p> <p>22 A Um, when there's proposed legislation changes or new 23 legislation in either immigration law or estate tax, 24 client demands swing, so the practice works out well 25 to have both because when it's quieter in</p>	<p style="text-align: right;">15</p> <p>1 don't go out and do anymore, um, like, legal rights 2 clinics or anything like that.</p> <p>3 Q And, um, do you advise employers on the rights of 4 immigrants?</p> <p>5 A I --</p> <p>6 Q Maybe that's a bad question.</p> <p>7 A Yeah, I'm not following the question.</p> <p>8 Q Um, do you advise employers concerning their 9 employees' immigration status?</p> <p>10 A Not really. If an employee -- if an employer calls 11 me, sometimes this happens, and says, "I have an 12 employee who I think is undocumented," I say, "If 13 you're aware that he's, he or she is undocumented, 14 you need to terminate that employee." And then the 15 call usually ends there. And I say, "You should -- 16 you know, you can terminate them and you can advise 17 them to go talk to an immigration lawyer." But 18 that's as far as that goes.</p> <p>19 Q And so as between, you know, you said you represent 20 unaccompanied minors and businesses. About how much 21 of your immigration work would you say is advising 22 businesses versus advising immigrants?</p> <p>23 A Um, right now I would say it's probably 60 percent 24 working with businesses on bringing in employees, 25 but a lot of times those are joint representations</p>
<p style="text-align: right;">14</p> <p>1 immigration because there's no changes or no -- no 2 court going on, um, often it's busier in estate 3 planning. So they balance each other well.</p> <p>4 Q And what's the nature of your immigration practice?</p> <p>5 A It's evolved over the years. Currently I do a lot 6 of work with, um, businesses looking to, um, sponsor 7 employees for permanent residency.</p> <p>8 I also locally focus on working with 9 unaccompanied minors. I just get a lot of 10 satisfaction with that. And there's good options 11 for them and they're not able to go to larger cities 12 where there's more immigration lawyers.</p> <p>13 I do a little bit of family petitions but less 14 and less of that because as I get busier, I am able 15 to refer those out to Omaha or Minneapolis or Des 16 Moines.</p> <p>17 And I do very little, um, in immigration court 18 anymore just because with my family and the 19 scheduling, um, that that requires, it became too 20 stressful, so I refer those out as well to the 21 cities.</p> <p>22 Q Do you advise on the rights of immigrant -- do you 23 advise immigrants on the rights of immigrants?</p> <p>24 A I will do initial -- I do initial consultations 25 where immigrants want to know their options, but I</p>	<p style="text-align: right;">16</p> <p>1 where I represent both the business and the 2 employees that we are bringing in.</p> <p>3 Q And what -- in general, you know, what types of 4 businesses do you advise in that capacity?</p> <p>5 A Oh, all over, universities, hospitals, agricultural 6 businesses, um, manufacturing.</p> <p>7 Q Um, are there any other aspects of your immigration 8 practice that you haven't already explained?</p> <p>9 A Occasionally I do citizenship applications.</p> <p>10 Q Is there any part of your immigration practice 11 that's considered, that you would consider pro bono?</p> <p>12 A I do some for, um, domestic violence victims and 13 occasionally for some of the unaccompanied minors, 14 but we generally do that more low bono so we're able 15 to spread out our services to more people who need 16 them.</p> <p>17 Q When we were talking earlier about the political 18 environment and how that balances out your practice, 19 um, how do political concerns affect your 20 immigration practice?</p> <p>21 A Any time there's proposed legislation, legislative 22 changes or a new program, um, or actual changes, it 23 drives -- first of all, it's in the news so people 24 are thinking about it. There may be new options for 25 people where there weren't options before, or people</p>

<p style="text-align: right;">17</p> <p>1 may be concerned that enforcement is stepping up and</p> <p>2 they want to review where they're at and if their</p> <p>3 options have changed, or sometimes they want to</p> <p>4 quickly move on something because they're concerned</p> <p>5 it won't be available later.</p> <p>6 Q Were any specific concerns at issue affecting your</p> <p>7 immigration practice in 2018?</p> <p>8 A There were concerns that enforcement would be</p> <p>9 higher, certainly, and that, um, it -- that review</p> <p>10 of petitions may become stricter, that review of</p> <p>11 petitions may take longer, um, a lot of just general</p> <p>12 questions with the new administration of what would</p> <p>13 this look like. And there was, um, among both</p> <p>14 employers and immigrants, just concerns about not</p> <p>15 knowing how the new administration would handle</p> <p>16 things just because of news clips and what was said</p> <p>17 by people in the administration.</p> <p>18 Q And just to clarify, by the new administration, are</p> <p>19 you speaking of the presidential change --</p> <p>20 A Yes.</p> <p>21 Q -- in 2016?</p> <p>22 A Yes.</p> <p>23 Q Um --</p> <p>24 A Immigration law is federal, so any time there's a</p> <p>25 change at the federal level, or lots of talk about</p>	<p style="text-align: right;">19</p> <p>1 talk to me about clarification, "What does this</p> <p>2 mean? Are all immigrants going to get deported?"</p> <p>3 It's things like that. So sometimes they would just</p> <p>4 come to me to ask, "I heard this in the news." What</p> <p>5 does that mean?" And it would be me explaining the</p> <p>6 system and how it works.</p> <p>7 Q And -- and generally how does the system work?</p> <p>8 A The immigration system?</p> <p>9 Q Well, in general, how would it work at the point of</p> <p>10 enforcement?</p> <p>11 A Um, well, it depends on the situation. Do you mean</p> <p>12 for employers or --</p> <p>13 Q For employers, yes.</p> <p>14 A Okay, for employers, okay. Um, for employers, if</p> <p>15 someone in Immigration Customs Enforcement, ICE, has</p> <p>16 reason to believe that an employer may be knowingly</p> <p>17 employing undocumented workers or have a large,</p> <p>18 knowing or unknowingly have a large percentage of</p> <p>19 their workers who are undocumented, in our area they</p> <p>20 may start looking into the matter. And they can</p> <p>21 come and ask for your I-9 forms. If it's a serious,</p> <p>22 if they have serious, serious concerns, they can get</p> <p>23 authorization to immediately come onto the property</p> <p>24 and interview workers, inspect documents and</p> <p>25 determine if there's not -- if there's not only</p>
<p style="text-align: right;">18</p> <p>1 immigration at the federal level, then that can turn</p> <p>2 into changes pretty quickly.</p> <p>3 Q And do you recall any -- you said enforcement might</p> <p>4 be higher. Do you recall any specific employer</p> <p>5 concerns in that regard generally?</p> <p>6 A I think I just had maybe comments from current</p> <p>7 clients of whether things would still be an option,</p> <p>8 if the path they were on would still work, um, if</p> <p>9 there would be more, um, workplace raids, things</p> <p>10 like that. I live in a small town, so people</p> <p>11 generally work side by side with their employees.</p> <p>12 So when employees, immigrant employees are nervous,</p> <p>13 it makes employers reach out to me sometimes.</p> <p>14 Q Any other concerns, general concerns from employers</p> <p>15 at that time?</p> <p>16 A Not that I recall specifically or could share about</p> <p>17 specific employers.</p> <p>18 Q Understood. And when you said there was concern</p> <p>19 about enforcement, enforcement by whom?</p> <p>20 A ICE.</p> <p>21 Q And do you mean more frequent ICE enforcement</p> <p>22 actions or --</p> <p>23 A Honestly a lot of the people who I talk to don't</p> <p>24 know the -- they don't know how immigration works.</p> <p>25 So they just hear things in the news, so they would</p>	<p style="text-align: right;">20</p> <p>1 undocumented employees but if the employer is</p> <p>2 knowingly hiring them. So they're the enforcement</p> <p>3 arm of the portion of the immigration code that</p> <p>4 requires workers -- or, sorry, employers to ensure</p> <p>5 through the I-9 form process essentially that their</p> <p>6 employees are authorized to work in the United</p> <p>7 States.</p> <p>8 Q So it sounded like you described, I'm going to</p> <p>9 summarize it as two tiers. You have a tier of where</p> <p>10 ICE would just ask for I-9 forms, and then you have</p> <p>11 a tier where there's a more serious concern and that</p> <p>12 leads to a deeper investigation; is that fair?</p> <p>13 A Yes.</p> <p>14 Q Um, does ICE -- when ICE, excuse me, asks for, in</p> <p>15 the -- in the, I'll call it the lower tier, what are</p> <p>16 the criteria that would lead ICE to ask for I-9</p> <p>17 forms?</p> <p>18 MR. BISS: Object to the form, speculation,</p> <p>19 opinion testimony.</p> <p>20 A I -- I can't say with legal certainty. And I'm not</p> <p>21 a trained ICE officer, but the way I explain to</p> <p>22 people is it could be, um, repeated detention of</p> <p>23 unauthorized workers who say, "I work at this and</p> <p>24 that place," you know, and they're seeing the same</p> <p>25 workers over and over.</p>

<p style="text-align: right;">21</p> <p>1 Um, it could be criminal -- law enforcement</p> <p>2 contact, so an officer could say, "We keep seeing</p> <p>3 undocumented workers at this location" and suggest</p> <p>4 that they look into it.</p> <p>5 Um, it can be tips from the public; although, I</p> <p>6 don't know if that's true, if they would follow up</p> <p>7 on any tip.</p> <p>8 And it could be, yeah, news articles and things</p> <p>9 in the media that would draw ICE's attention and</p> <p>10 make them question if they should go there and ask</p> <p>11 to review their I-9s.</p> <p>12 Q (By Ms. Hauser) And in -- in -- in such a situation,</p> <p>13 you said ICE would look at their I-9s. Would they</p> <p>14 also look at copies of supporting documents if they</p> <p>15 existed?</p> <p>16 A They can --</p> <p>17 MR. BISS: Objection, speculation.</p> <p>18 A They can require certain supporting documentation,</p> <p>19 but, um, under the statute what needs to be</p> <p>20 immediately provided are copies of I-9s for all</p> <p>21 current employees and the ones that need to be</p> <p>22 retained under the statute for terminated and former</p> <p>23 employees.</p> <p>24 Q (By Ms. Hauser) And if there were blanks on</p> <p>25 section 2 of an I-9 form, would ICE then look to</p>	<p style="text-align: right;">23</p> <p>1 concepts you were describing as something called ICE</p> <p>2 work site enforcement?</p> <p>3 A Yes.</p> <p>4 Q And can those I-9 -- would it be an I-9 audit when</p> <p>5 they come in on that first tier and look at your</p> <p>6 documents?</p> <p>7 A Yeah.</p> <p>8 MR. BISS: Objection, inadmissible opinion.</p> <p>9 Q (By Ms. Hauser) And can those I-9 audits, in your</p> <p>10 experience, lead to civil and even criminal</p> <p>11 penalties?</p> <p>12 A Yes.</p> <p>13 MR. BISS: Objection, inadmissible opinion.</p> <p>14 Q (By Ms. Hauser) And is one result of an I-9 audit</p> <p>15 that it can lead to the identification of workers</p> <p>16 who are unauthorized to work in the United States?</p> <p>17 MR. BISS: Objection, inadmissible opinion.</p> <p>18 A My understanding is ICE will run the information on</p> <p>19 the I-9s through their database and they come with a</p> <p>20 list to say, "These are the workers whose names and</p> <p>21 Social Security numbers either do not match or</p> <p>22 showed -- did not show up as an authorized worker."</p> <p>23 And then there's follow-up after that.</p> <p>24 Q (By Ms. Hauser) Is one of the points of follow-up</p> <p>25 that the employer could lose those workers?</p>
<p style="text-align: right;">22</p> <p>1 supporting documents?</p> <p>2 A They can do that.</p> <p>3 MR. BISS: Objection, speculation, inadmissible</p> <p>4 opinion.</p> <p>5 A If -- if the supporting documents are included with</p> <p>6 the I-9 form, especially, yes, that has been my</p> <p>7 experience. More I would have to research I guess</p> <p>8 if it came up.</p> <p>9 Q (By Ms. Hauser) And in your second tier where you</p> <p>10 talked about ICE entering the property, interviewing</p> <p>11 workers, inspecting documents, what, in your</p> <p>12 experience, are the serious concerns that would lead</p> <p>13 to that type of ICE intervention?</p> <p>14 A I can't speak to that with confidence because I</p> <p>15 haven't ever been involved in an ICE raid at that</p> <p>16 level.</p> <p>17 Q And just asking generally, not asking about any</p> <p>18 specific clients, have you been involved advising</p> <p>19 employers when ICE has come in and asked to look at</p> <p>20 their I-9 forms on a general level?</p> <p>21 A Yes. To a limited extent, yes.</p> <p>22 Q Have you done so in the last five years?</p> <p>23 A I don't know the exact time frame. It's been awhile</p> <p>24 because they haven't done them during COVID.</p> <p>25 Q Um, and would it be fair to describe your, the</p>	<p style="text-align: right;">24</p> <p>1 MR. BISS: Objection, inadmissible opinion.</p> <p>2 A It's possible if it ends up in further investigation</p> <p>3 or admissions from the workers that they are not</p> <p>4 authorized, then they would need to terminate those</p> <p>5 workers. And typically they work out with the</p> <p>6 government a schedule for doing so, if the workers</p> <p>7 are willing to stay on.</p> <p>8 Q (By Ms. Hauser) Um, and even without, you know, a</p> <p>9 raid, um, an employer can lose workers if it's</p> <p>10 determined or realized that the worker was using</p> <p>11 invalid documents?</p> <p>12 A I --</p> <p>13 MR. BISS: Objection, speculation.</p> <p>14 A I guess I don't --</p> <p>15 MR. BISS: Inadmissible opinion.</p> <p>16 A I don't understand the question.</p> <p>17 Q (By Ms. Hauser) Sure. Is it possible for an</p> <p>18 employer to lose workers if those workers had</p> <p>19 presented invalid documents?</p> <p>20 MR. BISS: Same objections.</p> <p>21 A In what situation?</p> <p>22 Q (By Ms. Hauser) In the context of an ICE work site</p> <p>23 enforcement.</p> <p>24 A Um, I mean, the workers, if -- if the workers know</p> <p>25 that they're unauthorized, they may get nervous and</p>

<p style="text-align: right;">25</p> <p>1 just leave. I mean, I suppose so.</p> <p>2 Q And have -- and the employer could learn that the</p> <p>3 workers are unauthorized and have to terminate them;</p> <p>4 is that correct?</p> <p>5 A Either through --</p> <p>6 MR. BISS: Objection, calls for speculation.</p> <p>7 A Either through, um, information coming from ICE</p> <p>8 based on review or if the employee -- if the</p> <p>9 employee -- employer -- employee admissions is</p> <p>10 usually how that turns -- comes out.</p> <p>11 THE COURT REPORTER: Excuse me. Can you just</p> <p>12 please let him get his objection out before you</p> <p>13 starting answering?</p> <p>14 THE DEPONENT: Uh-huh.</p> <p>15 THE COURT REPORTER: Thank you.</p> <p>16 Q (By Ms. Hauser) Are there any other circumstances</p> <p>17 besides employee admissions or obtaining information</p> <p>18 from ICE in which an employer would learn that its</p> <p>19 employees are not authorized to work in the United</p> <p>20 States?</p> <p>21 MR. BISS: Objection, inadmissible opinion,</p> <p>22 speculation.</p> <p>23 A In the context of ICE coming in?</p> <p>24 Q (By Ms. Hauser) Yes.</p> <p>25 A Um, I don't know.</p>	<p style="text-align: right;">27</p> <p>1 employers are -- that -- I don't even remember who</p> <p>2 asked me to speak, but they said that ag employers</p> <p>3 want to hear about ways of looking for more</p> <p>4 employees, I guess, because it's a struggle to find</p> <p>5 workers for everyone.</p> <p>6 Um, and I said, "Should I speak much" -- I</p> <p>7 think I asked, "Do you need a lot of I-9 type talk?"</p> <p>8 And they said, "Well, Brent Stanley from ICE will be</p> <p>9 there." And I said, "He'll probably cover that</p> <p>10 then." I don't remember, there may have been a</p> <p>11 slide or two, because I probably say -- and I</p> <p>12 always -- I always have a slide on it, "Employers,</p> <p>13 you have to know that also. You need to be filling</p> <p>14 out I-9s." But I knew that Brett Stanley was</p> <p>15 already speaking on that, so I wouldn't have gone</p> <p>16 into much depth. Um --</p> <p>17 Q What did you mean by low employment (sic) situation?</p> <p>18 A Oh, I -- just nationwide, um, with, um, during and</p> <p>19 after COVID, just employers in all sectors have been</p> <p>20 contacting me about ways to fill needs because</p> <p>21 there's just a lot of demand from employers in all</p> <p>22 sectors right now. Um...</p> <p>23 Q Um, do you know -- and this was a discussion for --</p> <p>24 the audience were dairy farmers; is that right?</p> <p>25 A I don't know if it was -- yeah, I think it was a</p>
<p style="text-align: right;">26</p> <p>1 Q Um, did you present at a conference to agriculture</p> <p>2 and farmers in October of 2021 -- or November of</p> <p>3 2021?</p> <p>4 A Yes, by Zoom.</p> <p>5 Q And what was the subject of your discussion?</p> <p>6 A Immigration options and issues for agriculture</p> <p>7 employers, or something like that. I was asked by</p> <p>8 the, um, like the Agriculture Outreach Office or, of</p> <p>9 Iowa state or the 4H, something similar, someone had</p> <p>10 asked me to present on that, so I did that.</p> <p>11 Q And were other -- you presented -- were there other</p> <p>12 presenters at that conference?</p> <p>13 A Yeah. The only one I remember is Brett Stanley from</p> <p>14 the Sioux City ICE office. I just appeared for my</p> <p>15 presentation by Zoom.</p> <p>16 Q And did you attend Mr. Stanley's presentation?</p> <p>17 A No.</p> <p>18 Q And what was the nature of your presentation?</p> <p>19 A We ran through, um, temporary and -- like temporary</p> <p>20 visas that agriculture employers may be able to use</p> <p>21 to sponsor workers to meet needs that they can't</p> <p>22 fill with the current low unemployment situation,</p> <p>23 and then also ways to sponsor immigrants for green</p> <p>24 cards to meet those -- to fill gaps, was the main</p> <p>25 thing. That's what I was asked, that they said that</p>	<p style="text-align: right;">28</p> <p>1 dairy alliance, yeah. Um, I would have basically</p> <p>2 reused one that I use for all agricultural employers</p> <p>3 though because it's a lot of line -- it's a lot in</p> <p>4 line. So it was kind of -- it wasn't WIDA. It may</p> <p>5 have been the Iowa State Dairy Extension or</p> <p>6 something that asked me to do it. I didn't charge</p> <p>7 for it and I just did it by Zoom, so I said, "Okay,</p> <p>8 I'll do that. If I can appear by Zoom, no problem."</p> <p>9 Q Do you know if it was recorded?</p> <p>10 A Um, I don't know.</p> <p>11 Q Um, and, again, just asking briefly: You said there</p> <p>12 were temporary visas options. What are those</p> <p>13 options for employers?</p> <p>14 A How in depth do you want me to go?</p> <p>15 Q Super general.</p> <p>16 A Um, TN visas, H-2A seasonal ag visas, and for some,</p> <p>17 but probably -- I don't know, in dairies it's rare,</p> <p>18 would be an H-1 B.</p> <p>19 Q And all of these are available to dairy farms?</p> <p>20 A Dairy -- dairy farms in our area generally use TN</p> <p>21 visas. Um, it's -- H-2As don't work for milkers</p> <p>22 typically but if they have crop farming. So we just</p> <p>23 went into the different scenarios. So it depends on</p> <p>24 the employer and their operation. I've had one</p> <p>25 H-1 B at a dairy farm.</p>

<p style="text-align: right;">29</p> <p>1 Q Is it fair to say, you know, decades ago there used</p> <p>2 to be a more robust visa program for immigrant</p> <p>3 workers to work in agricultural, something called</p> <p>4 the Bracero's program?</p> <p>5 A I have almost no familiarity of that because I</p> <p>6 didn't practice then. And most people who could get</p> <p>7 through that, there was a SAW; there was a</p> <p>8 Bracero's, however you want to call it. Um, some</p> <p>9 people -- yeah, so very rarely will it come with</p> <p>10 someone who's eligible for that who hasn't already</p> <p>11 taken advantage of that come across my practice, so</p> <p>12 my knowledge of those programs are quite limited.</p> <p>13 Q And what's the -- what are the contours of the TN</p> <p>14 visa? Again speaking super generally.</p> <p>15 A So the TN visa -- I actually, myself, don't do a lot</p> <p>16 of TNs because there is someone in Minneapolis who</p> <p>17 does a lot of TNs for the dairies in that area. Um,</p> <p>18 it seems to work well for them, so often I will say,</p> <p>19 "This may be an option for you," and I'll refer them</p> <p>20 to him.</p> <p>21 But on a dairy, TNs typically do animal science</p> <p>22 type work. The job has to require a bachelor's</p> <p>23 degree in the field, and there's certain job</p> <p>24 categories you can bring someone in on. Um, so</p> <p>25 typically you're looking at the animal breeder,</p>	<p style="text-align: right;">31</p> <p>1 A So you can sponsor someone straight for permanent</p> <p>2 residency if you determine what wage you need to pay</p> <p>3 them and you advertise the positions and there's not</p> <p>4 enough workers. And that can be almost any</p> <p>5 position, not enough U.S. workers.</p> <p>6 Um, I do alert dairies, they struggle with one</p> <p>7 of the -- one of the, um, hurdles to that is these</p> <p>8 would likely be workers you've never employed</p> <p>9 before, so you don't get to test them out. It's a</p> <p>10 two-and-a-half to three-and-a-half to four or longer</p> <p>11 year process. Um, and at some -- towards the end of</p> <p>12 the process there's an ability-to-pay requirement,</p> <p>13 which, depending on the dairy market at the time and</p> <p>14 how the dairy does their tax returns, they may not</p> <p>15 be able to meet, because if you haven't employed the</p> <p>16 worker before, it's very dependent on tax filings,</p> <p>17 which with dairies that can be a struggle because</p> <p>18 they have accelerated depreciation, so some dairies</p> <p>19 just may not be able to use that program. For --</p> <p>20 technically -- it gets in the weeds, but yeah, it's</p> <p>21 not an option for everyone.</p> <p>22 Q When you were contacted by Lori Nunes in the fall of</p> <p>23 2018, was any part of -- were you asked any</p> <p>24 questions about any of these visa programs?</p> <p>25 A I don't remember.</p>
<p style="text-align: right;">30</p> <p>1 animal science type jobs if you're talking dairies,</p> <p>2 and the worker needs to be from Mexico or Canada.</p> <p>3 Q Um, and I think you said the H-2A seasonal visas,</p> <p>4 they're for crop farming?</p> <p>5 A They're for seasonal work, so the work must -- the</p> <p>6 job must be seasonal. It's a little more nuanced</p> <p>7 than that. I don't do H-2As. I refer those out as</p> <p>8 well because -- so this was more to alert people to</p> <p>9 options. And a lot of times if they say, "I'm</p> <p>10 looking at a TN or I'm looking at an H-2A," I</p> <p>11 have -- I will refer them to the appropriate...</p> <p>12 Q And you said the H- -- and what are the parameters</p> <p>13 of the H-1 B?</p> <p>14 A The H-1 B is also, the job needs to require a</p> <p>15 bachelor's degree. And it has to be a specialty</p> <p>16 occupation. I guess that's what that is called.</p> <p>17 And for the H-1 B there's a lottery, so it's less</p> <p>18 likely, even if you qualify, that you'll get it. So</p> <p>19 TNs in our area are more popular.</p> <p>20 Q Um, and then you also said there's a -- you talked</p> <p>21 about permanent visa sponsorships; is that correct?</p> <p>22 A Yes.</p> <p>23 Q And what would those parameters be as applied to --</p> <p>24 or what did you talk about those parameters as</p> <p>25 applied to dairy farmers?</p>	<p style="text-align: right;">32</p> <p>1 MR. BISS: Object to the form.</p> <p>2 Q (By Ms. Hauser) Um, and just going back to the --</p> <p>3 the previous discussion about the permanent visa</p> <p>4 option -- or permanent resident option, why would</p> <p>5 the dairies have -- you suggested that the dairies</p> <p>6 would have to hire new workers; is that right?</p> <p>7 A Correct. If someone is here undocumented, um, then</p> <p>8 you wouldn't -- they wouldn't be able to go through</p> <p>9 this process in, I mean, 99 percent of cases because</p> <p>10 you can't go from undocumented status to permanent</p> <p>11 resident status in the U.S. through an employer</p> <p>12 petition. You would have to go outside the U.S. for</p> <p>13 your interview. And at that point if the individual</p> <p>14 had been in the U.S. for more than a year under</p> <p>15 unlawful status, they would have most likely a</p> <p>16 ten-year inadmissibility bar to come back.</p> <p>17 Q And I think you said -- and so how does that -- have</p> <p>18 you seen that program applied to dairies before?</p> <p>19 Have you seen dairy --</p> <p>20 MR. BISS: Objection, inadmissible opinion.</p> <p>21 A Um, I've -- I've worked with dairies to petition</p> <p>22 employees for green cards who were on TNs or H-1 Bs</p> <p>23 previously and, um, to try to employ people as</p> <p>24 milkers who have never worked for them but that</p> <p>25 we've hit roadblocks typically in that situation,</p>

<p style="text-align: right;">33</p> <p>1 largely on ability to pay problems or because the</p> <p>2 worker has never been in the U.S. and, um, and, um,</p> <p>3 the connection and inability to make sure that, you</p> <p>4 know, interviewing them and making sure they'd be a</p> <p>5 fit is -- is not there.</p> <p>6 Q (By Ms. Hauser) So would it be fair in your</p> <p>7 experience that not many dairies take, use this</p> <p>8 opportunity?</p> <p>9 MR. BISS: Objection, inadmissible opinion.</p> <p>10 A I can't say to all dairies. We've had success</p> <p>11 moving people from TNs and H-1 Bs to green cards.</p> <p>12 Um, I can't say if other dairies have had success</p> <p>13 using the green card program to bring in milkers.</p> <p>14 Um, the ones that we've tried have not panned out</p> <p>15 unfortunately.</p> <p>16 Q (By Ms. Hauser) Do you have a general understanding</p> <p>17 that agriculture in -- in northwest Iowa has</p> <p>18 undocumented workers, have undocumented workers in</p> <p>19 the workforce generally?</p> <p>20 MR. BISS: Objection, relevance, inadmissible</p> <p>21 opinion.</p> <p>22 A There is a percentage of undocumented workers in the</p> <p>23 workforce in agriculture in northwest Iowa.</p> <p>24 Q (By Ms. Hauser) Have you --</p> <p>25 THE COURT REPORTER: I'm sorry.</p>	<p style="text-align: right;">35</p> <p>1 speculation.</p> <p>2 A It depends on the sector.</p> <p>3 Q (By Ms. Hauser) How about in dairy farms?</p> <p>4 MR. BISS: Same objections.</p> <p>5 A I -- I -- I couldn't speak to all to -- to dairy</p> <p>6 farms. I mean, the ones that I've been on, there's</p> <p>7 a lot of Latinos. I don't know where they were</p> <p>8 born.</p> <p>9 Q (By Ms. Hauser) Are you aware of any recent</p> <p>10 legislative proposals to allow undocumented workers</p> <p>11 in agriculture to obtain some kind of status to</p> <p>12 allow them to remain and work in the U.S.?</p> <p>13 A Yes. I haven't even looked into them that closely</p> <p>14 because experience tells me not to get your hopes up</p> <p>15 or plan anything or anything like that until the</p> <p>16 President signs it.</p> <p>17 THE COURT REPORTER: Until what?</p> <p>18 THE DEPONENT: The President signs it.</p> <p>19 A Um...</p> <p>20 Q (By Ms. Hauser) And would it be fair to say that a</p> <p>21 part of the problem in this area is that federal law</p> <p>22 hasn't been updated in the last several decades to</p> <p>23 provide a path for farms and dairies to get work</p> <p>24 visas for their workers?</p> <p>25 MR. BISS: Objection, speculation, inadmissible</p>
<p style="text-align: right;">34</p> <p>1 Q (By Ms. Hauser) Is there any --</p> <p>2 MR. HUFF: Hold on. She lost her microphone.</p> <p>3 THE COURT REPORTER: Thank you.</p> <p>4 Q (By Ms. Hauser) Do you have an understanding of what</p> <p>5 that percentage may be?</p> <p>6 A No.</p> <p>7 MR. BISS: Objection, inadmissible opinion.</p> <p>8 Q (By Ms. Hauser) Have you ever read any news or</p> <p>9 studies suggesting what the percentage of</p> <p>10 undocumented workers is in the agriculture?</p> <p>11 A Not that I remember, a percentage or actual study,</p> <p>12 no.</p> <p>13 Q Are you aware that that subject does get studied</p> <p>14 from time to time by -- by universities or -- or --</p> <p>15 or the U.S. Government?</p> <p>16 A I would imagine. I'm not involved in the studies</p> <p>17 and I haven't seen them.</p> <p>18 Q In your experience -- excuse me, does your</p> <p>19 experience give you any basis to estimate what that</p> <p>20 percentage might be?</p> <p>21 A No. That would be impossible.</p> <p>22 Q Do you have a general understanding that the</p> <p>23 workforce in agriculture in northwest Iowa is</p> <p>24 comprised primarily of foreign born workers?</p> <p>25 MR. BISS: Objection, inadmissible opinion,</p>	<p style="text-align: right;">36</p> <p>1 opinion.</p> <p>2 A Could you ask the question again?</p> <p>3 MS. HAUSER: Can you read it back?</p> <p>4 Q (By Ms. Hauser) If you still can't understand it,</p> <p>5 I'll restate it.</p> <p>6 (Testimony read back as follows: Q. "And</p> <p>7 would it be fair to say that a part of the problem</p> <p>8 in this area is that federal law hasn't been updated</p> <p>9 in the last several decades to provide a path for</p> <p>10 farms and dairies to get work visas for their</p> <p>11 workers?")</p> <p>12 A Well, you're asking my opinion here. I would like</p> <p>13 to see some forms.</p> <p>14 Q (By Ms. Hauser) And is that consistent with your you</p> <p>15 don't want to get your hopes up comment earlier?</p> <p>16 A Yes.</p> <p>17 Q So if many of these workers cannot get valid visas</p> <p>18 to work on farms and in the dairy industry, are they</p> <p>19 simply allowed to work without proper documentation?</p> <p>20 MR. BISS: Object to the form, speculation,</p> <p>21 inadmissible opinion.</p> <p>22 A It depends on the employer.</p> <p>23 Q (By Ms. Hauser) Um, so in your experience, again,</p> <p>24 without delving into your relationship, specific</p> <p>25 client relationships, um, what is your understanding</p>

<p style="text-align: right;">37</p> <p>1 of how workers fill out I-9s if they are</p> <p>2 undocumented?</p> <p>3 MR. BISS: Objection, speculation, inadmissible</p> <p>4 opinion.</p> <p>5 A If they're undocumented? They may refuse to fill</p> <p>6 out the I-9 or be unable to because they don't have</p> <p>7 the correct documentation. If an employer would</p> <p>8 call me with that question, I would say, "You can't</p> <p>9 employ that person until they bring in the correct</p> <p>10 documentation." They may provide fraudulent</p> <p>11 documentation, either someone else's identification</p> <p>12 or, um, like, um, fake documents that they purchased</p> <p>13 to show the employer and use those to fill out the</p> <p>14 I-9.</p> <p>15 Q In your experience advising employers, have you ever</p> <p>16 been asked to review identification documents</p> <p>17 provided by employees --</p> <p>18 MR. BISS: Objection, inadmissible opinion.</p> <p>19 A I've never been asked to review the originals.</p> <p>20 Q (By Ms. Hauser) So you've reviewed copies?</p> <p>21 A Copies, photocopies. But I'll hedge this with: Um,</p> <p>22 at that point -- how do I say this -- the -- the</p> <p>23 employee has either been terminated, so the</p> <p>24 document -- the photocopy is what it is, or they've</p> <p>25 already gone through the I-9 process, and there's</p>	<p style="text-align: right;">39</p> <p>1 at Plaintiffs' Exhibit 1, which is the Esquire</p> <p>2 article, and if you could turn at the page on the</p> <p>3 bottom it says "Lizza," I think it says 00525. Um,</p> <p>4 are you at that page?</p> <p>5 A Yes.</p> <p>6 Q Um, if you look at the first full paragraph, it</p> <p>7 says, quote, "Eighty percent of the Latino</p> <p>8 population out here in northwest Iowa is</p> <p>9 undocumented."</p> <p>10 Do you see that sentence?</p> <p>11 A Yes.</p> <p>12 Q Um, is that consistent with your experience in</p> <p>13 practicing immigration law?</p> <p>14 MR. BISS: Objection, inadmissible opinion.</p> <p>15 A To me that would be an overestimate and</p> <p>16 exaggeration.</p> <p>17 Q (By Ms. Hauser) And if you go down a little, the end</p> <p>18 of the next line, it said -- sorry, the third line</p> <p>19 down, at the end it says -- sorry, the fourth line</p> <p>20 down, "We have a very tight labor pool around here."</p> <p>21 is that what you were referring to earlier when you</p> <p>22 said, you know: We had low unemployment?</p> <p>23 A Yeah. We live in --</p> <p>24 MR. BISS: Objection, inadmissible --</p> <p>25 objection, inadmissible opinion.</p>
<p style="text-align: right;">38</p> <p>1 limitations on what you can do at that point in</p> <p>2 asking for originals and things because you can get</p> <p>3 into discrimination area.</p> <p>4 So generally what I do is rather than focusing</p> <p>5 on the old documents provided, I advise them how to</p> <p>6 use best practices going forward. But if there's</p> <p>7 blatant obvious documents from the photocopies, it</p> <p>8 depends on the audit, if they've asked me to review</p> <p>9 them or not, but I may suggest that this one is not</p> <p>10 correct, more likely than not it's -- it's, um, like</p> <p>11 not the correct document, like it's not an A, B or C</p> <p>12 document on an I-9 form, which I would say, "Follow</p> <p>13 up with this. It's not the right type of document</p> <p>14 that they provided to you."</p> <p>15 Q And assuming that the employee has not provided a</p> <p>16 type A document, um, there needs to be both then a</p> <p>17 type B or a type C document presented, correct?</p> <p>18 A Correct.</p> <p>19 MR. BISS: Objection, speculation, inadmissible</p> <p>20 opinion.</p> <p>21 Q (By Ms. Hauser) And that's right on the form I-9 and</p> <p>22 its instructions, correct?</p> <p>23 A Correct.</p> <p>24 MR. BISS: Same objections.</p> <p>25 Q (By Ms. Hauser) If you -- can you take a peek back</p>	<p style="text-align: right;">40</p> <p>1 A We live in a rural area with a lot of industry, so</p> <p>2 that would be for every employer in our area.</p> <p>3 Q (By Ms. Hauser) The previous page, 524, um, the very</p> <p>4 bottom of the page says, quote: In every</p> <p>5 conversation I had with dairy farmers and industry</p> <p>6 insiders in northwest Iowa, it was taken as a fact</p> <p>7 that the local dairies are wholly dependent on</p> <p>8 undocumented labor. The low unemployment rate (it's</p> <p>9 2 percent in this county), and et cetera, et cetera,</p> <p>10 make hiring outside of the readily available pool of</p> <p>11 immigrants from Mexican and Guatemala unthinkable.</p> <p>12 Is that consistent with your experience in</p> <p>13 northwest Iowa practicing immigration law?</p> <p>14 MR. BISS: Objection, speculation, inadmissible</p> <p>15 opinion.</p> <p>16 A I -- I think that's an exaggeration.</p> <p>17 Q (By Ms. Hauser) But you'll agree that at least some,</p> <p>18 there is some percentage of undocumented workers</p> <p>19 working on dairy farms in northwest Iowa?</p> <p>20 A There is some percentage.</p> <p>21 MR. BISS: Objection, speculation, inadmissible</p> <p>22 opinion.</p> <p>23 Q (By Ms. Hauser) Based on your experience?</p> <p>24 A Yes.</p> <p>25 Q Um, on Page 525 again, in the second full paragraph,</p>

<p style="text-align: right;">41</p> <p>1 um, it says, quote, "The farmer explained that all</p> <p>2 the dairies require their workers to provide</p> <p>3 evidence of their legal status and pay the required</p> <p>4 state and federal taxes. But it's an open secret</p> <p>5 that the system is built on easily obtained</p> <p>6 fraudulent documents."</p> <p>7 Is that statement consistent with your</p> <p>8 experience in northwest Iowa practicing immigration</p> <p>9 law?</p> <p>10 A I haven't had --</p> <p>11 MR. BISS: Objection, inadmissible opinion.</p> <p>12 A I haven't had those exact conversations with dairy</p> <p>13 farmers, so, um, I would say my experience is that</p> <p>14 they do request documents. What -- the rest I would</p> <p>15 not be able to say.</p> <p>16 Q (By Ms. Hauser) And we talked earlier and you said</p> <p>17 one way that undocumented workers may provide forms</p> <p>18 to their employer is to provide fake documents; is</p> <p>19 that fair to say?</p> <p>20 A Yes.</p> <p>21 MR. BISS: Objection, inadmissible opinion.</p> <p>22 Q (By Ms. Hauser) And that's, again, based on your</p> <p>23 experience in practicing immigration law in</p> <p>24 northwest Iowa?</p> <p>25 MR. BISS: Same objections.</p>	<p style="text-align: right;">43</p> <p>1 about this article, and then I was able to find it</p> <p>2 when she was telling me about it.</p> <p>3 Q And what did she say on that phone call?</p> <p>4 A I don't remember, other than, um, I think who she</p> <p>5 was and that -- I mean, what detail I don't know,</p> <p>6 and, um, that she, not using exact words, but got my</p> <p>7 name from another dairy family she knows who I'd</p> <p>8 helped. Um, I had come and done, like reviewed</p> <p>9 their paperwork or something. I don't know what</p> <p>10 term she used.</p> <p>11 Q Anything else you remember about the phone call?</p> <p>12 A I remember Lori being upset and more so just how she</p> <p>13 was portrayed in the article. And then I read the</p> <p>14 article. Um, I don't remember more than that.</p> <p>15 Q What did you say on the initial phone call?</p> <p>16 A I don't remember. I don't remember if she'd asked</p> <p>17 me at that time to come out to review her paperwork</p> <p>18 or if she had asked if there was anything that I</p> <p>19 could help her with to make sure she was doing</p> <p>20 things right.</p> <p>21 At some point -- there was a couple of calls, I</p> <p>22 think. And at some point, either -- I offered to</p> <p>23 come out and see if there was anything I could do to</p> <p>24 put her at ease. She just seemed really anxious</p> <p>25 about the whole article, um, and -- and, um, it just</p>
<p style="text-align: right;">42</p> <p>1 A Yes.</p> <p>2 MS. HAUSER: Let's go off the record for five</p> <p>3 minutes, ten minutes.</p> <p>4 MR. BISS: No problem. Do you want to take</p> <p>5 a -- do you want to take a break until, let's say,</p> <p>6 10:45?</p> <p>7 MS. HAUSER: That's fine with me, Steve.</p> <p>8 MR. BISS: Okay.</p> <p>9 MR. BOYER: That's fine.</p> <p>10 MS. HAUSER: That's great. Thank you.</p> <p>11 THE VIDEOGRAPHER: This ends Media Unit</p> <p>12 No. 1 of the video recorded deposition of Amanda</p> <p>13 Bahena, to be continued on Media Unit No. 2.</p> <p>14 Going off the record at 10:34 Central Time.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: This begins Media Unit No. 2</p> <p>17 in the video recorded Zoom deposition of Amanda</p> <p>18 Bahena.</p> <p>19 We are back on the record at 10:54 Central</p> <p>20 Time.</p> <p>21 Q (By Ms. Hauser) Ms. Bahena, when did you first</p> <p>22 communicate with anyone at NuStar Farms?</p> <p>23 A I don't remember the exact date, but it would have</p> <p>24 been after the article was published, because they</p> <p>25 called me, Lori called me, I believe, to tell me</p>	<p style="text-align: right;">44</p> <p>1 kind of developed over the phone from there.</p> <p>2 Q Do you recall how long that first phone call was?</p> <p>3 A I don't recall. Not extremely long. It was not --</p> <p>4 to my recollection, it wasn't a scheduled consult.</p> <p>5 She called and happened to get to me, which</p> <p>6 typically then it would be a shorter conversation</p> <p>7 because I would have to make sure we didn't have</p> <p>8 conflicts of interest or anything in representing</p> <p>9 them before I could give them legal advice.</p> <p>10 Q So I take it you did not dole out any legal advice</p> <p>11 on that initial phone call?</p> <p>12 A No, not to my -- no, I wouldn't have done that.</p> <p>13 Q And you said there were a couple of phone calls.</p> <p>14 When was the next phone call?</p> <p>15 A I don't remember. It wasn't -- with the article and</p> <p>16 everything and her being anxious, I feel the calls</p> <p>17 were more her being upset of how she was portrayed</p> <p>18 in the article, um, and I don't remember exactly how</p> <p>19 it developed that I was there at their dairy later,</p> <p>20 um, reviewing I-9 forms with them. The exact number</p> <p>21 of calls or anything, I don't remember. The first</p> <p>22 time -- I just know the first time I met her and</p> <p>23 really started talking with her about things was</p> <p>24 when we were physically at the dairy, and that was</p> <p>25 only one time.</p>

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1 Q And do you have any understanding of why she called
2 you, an immigration lawyer, if she was just anxious
3 about how she was portrayed in the article?

4 A She said, not in these exact words, but she's been
5 trying to do things right but wasn't -- just wanted
6 to make sure she wasn't messing things up. Not in
7 those words, but...

8 Q That was the sum and substance of your conversation?

9 A Yes, yes, that she was trying to do things right but
10 she wanted to make sure she wasn't getting into
11 trouble or messing any things up, anything up.

12 Q And getting into trouble concerning documenting
13 workers?

14 A I -- reviewing the article, just making sure that
15 she wasn't missing anything or doing things wrong as
16 opposed -- I mean, when -- in her role in helping at
17 the dairy.

18 Q But concerning employment practices at the dairy?

19 A Yeah. I mean, she said: This article says we're --
20 I mean, in not so many words, or maybe more: The
21 article says we're employing undocumented workers.
22 I'm trying to do things -- I've been trying to do
23 things right, but I want to make sure there's not
24 anything that I've missed or I'm doing wrong. And
25 she didn't want to cause problems for herself or

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1 her -- her family.

2 Q And she was speaking -- um, was she speaking
3 about -- you said she didn't want to do anything
4 wrong. Was it your understanding that she was
5 performing tasks required to comply with immigration
6 laws at the farm?

7 A Over the phone I didn't ask all of the details. And
8 a lot of times I'll get those calls and people think
9 they're doing things right and you get to the site
10 and things are not being done right. I don't --
11 I -- I didn't get into details. I just -- at some
12 point I would have said, "Well, let's look through
13 the documents that you -- that you guys are doing."
14 Um, based on those conversations on the call, I
15 wasn't even sure who was preparing I-9s at the
16 dairy. Um, I essentially reserved that for when we
17 got there. And I said, you know, "Get your I-9s
18 ready so that it's efficient when I come, and we'll
19 just see what kind of state they're in when I get
20 there."

21 Q When she said she didn't want to cause problems, the
22 article says we're employing -- and I appreciate you
23 were summarizing, but: The article says we're
24 employing undocumented workers. I don't want to
25 cause any problems, did you have an understanding of

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1 what problems she was referring to?

2 MR. BISS: Object to the form.

3 A Like I said, I don't know if she used those words.
4 That was the impression that I got, she was anxious,
5 um, because of the news story that was national
6 news. Um, she -- I think she wanted to make sure
7 that she wasn't missing anything or doing anything,
8 when she thought she was doing things right, that
9 she wasn't missing anything. So I -- I didn't ask
10 for specifics. I just -- I think they were fairly
11 short phone calls. I read the articles, and then we
12 arranged for me to come out there.

13 Q (By Ms. Hauser) And by "missing anything," did you
14 have an understanding she meant missing anything in
15 terms of complying with immigration laws?

16 A At that point I didn't know -- when I went out to
17 the dairy, I didn't know what situation I'd be
18 walking into, if they had an I-9 form for anyone or
19 almost no one. Um, I've been in situations where
20 it's a family-run business and no one is trained in
21 Human Resources, and, um, they don't know what an
22 I-9 form is. So in my experience it's best to just
23 say, "Prepare what you have and we'll -- we won't
24 hash it over right now. We'll get there and we'll
25 just see what kind of state everything is in."

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1 Q Did she express to you on either phone call that she
2 was concerned about government enforcement?

3 A Not that I recall.

4 Q Did she mention ICE on the phone call?

5 A Not that I remember.

6 Q And just to -- when you say not that you remember,
7 you don't remember one way or another or you don't
8 think it came up?

9 A I don't remember one way or the other. It was -- it
10 was -- I'm sure it was in the back of my head, but I
11 don't want to say it's because she said. I don't
12 know if she said it. I -- in my head I said: Oh,
13 this story could alert, um, ICE, so -- but I don't
14 know if she was even aware of that or said that.

15 Q Um, when you -- either from your phone calls or from
16 your visit, was Mrs. Nunes' concern about I-9s or
17 was she also referring to other things like W-2s or
18 wage and hour laws?

19 A I --

20 MR. BISS: Object to the form.

21 A I don't know. I only offered her the I-9s because I
22 don't review other types of documents.

23 Q (By Ms. Hauser) So it's fair -- is it fair to say
24 that the nature of your engagement was an
25 immigration consult?

1 A Yes. Even more narrowly, an I-9 review. She wanted
2 to look through her I-9s to make sure she was doing
3 things right. And I said, "Well, if we're going to
4 do this, you're under a microscope, why don't I come
5 and help you with that because you can make things
6 worse through a badly done internal I-9 review."
7 Q Is there such a thing as an internal I-9 review?
8 A Oh, yes. Many companies do them without the
9 assistance of a lawyer.
10 Q And so that's what you meant by internal?
11 A Yes, that she -- basically someone in the company,
12 an employee of the company, looks through, like any
13 documentation, and says: Do we have one for
14 everyone? Are these filled out correctly? But as
15 she wasn't HR trained, I had concerns that she may
16 have created more problems in doing an I-9 review
17 incorrectly, and I offered to come and help her with
18 that.
19 Q Did you send an engagement letter to the farm?
20 A Not that I recall.
21 Q Is it part of your practice to send an engagement
22 letter to your clients?
23 A We generally do, but unfortunately I am not very
24 good about remembering to send engagement letters,
25 so I try to, but it does not always happen.

1 Q And your firm got a subpoena for documents at some
2 point?
3 A Yes.
4 Q Related to the plaintiffs?
5 A Yes.
6 Q And did you look for responsive documents?
7 A Yes.
8 Q And did you not find an engagement letter?
9 A I -- if it wasn't provided, I didn't find an
10 engagement letter. I sent everything. I remember
11 there weren't very many documents.
12 Q And when you said you sent everything, did you send
13 everything to Mr. Biss?
14 A Well, my partner, Sander Morehead, was helping, um,
15 gathering some of those. I don't think I was the
16 one to send them. But we have everything in
17 physical or electronic files under that person. So,
18 um, they would have gone into the file for -- I
19 guess I don't know exactly how they gathered all of
20 the documents, but they asked me if I thought there
21 was anything else. And, no, I -- they showed me
22 what they were going to send. But that's been
23 awhile.
24 Q Did you -- do you recall taking any notes of your
25 telephone calls with Mrs. Nunes?

1 A I may have hand written some notes, like contact
2 information, but I did not keep them, just chicken
3 scratch.
4 Q Did you make any handwritten notes when you visited
5 the farm?
6 A I don't remember. I may have and then changed it
7 into the letter that I sent out. Um, but anything
8 in the notes I would have put in the letter I sent
9 out. And I -- I don't -- I couldn't find any notes
10 that I had retained.
11 Q If you look back at what we marked as Exhibit 120,
12 which is an e-mail from Mrs. Nunes --
13 A Uh-huh.
14 Q -- um, do you know -- did you have any conversations
15 with Mrs. Nunes about this article, which is a
16 different article?
17 A Yeah, I don't believe so, because I think at this
18 point I figured it was just kind of back and forth
19 between media people.
20 Q In response to the documents subpoena, what
21 specifically do you remember gathering and giving to
22 your partner?
23 A They ran with it. I think they said, "Is there
24 anything else that there would be out there?" So I
25 think I looked for "Nunes" in my -- in my e-mail

1 chain. Um, so there was this e-mail, the letter I
2 sent to them after the audit. And I don't remember
3 anything else.
4 Q Did your firm retain or make any copies of forms
5 I-9?
6 A No. Everything is -- all the documents stayed on
7 site and I didn't copy anything. On site being at
8 the Nunes dairy.
9 Q Is that consistent with your practice?
10 A Yes. My practice, I don't make copies of I-9s. I'm
11 not actually doing I-9 audits anymore because I
12 wasn't asked to do that many in the start because we
13 only have so many local businesses. Um, so it was
14 picking up at that point. But yeah, I've never
15 made -- well, maybe one time someone brought me
16 their I-9s and I said, "No, I'd rather do them at
17 your place." But they brought them to me anyway.
18 And I may have scanned them and given them back
19 because I said, "I don't want your original I-9s
20 here." But in all other occasions I'd go to them.
21 Q And picking up on something you said, you said it
22 was picking up at that point. What -- what did you
23 mean by that?
24 A We had, um, a dairy in our area, or two, had been
25 audited on their I-9s. And I couldn't tell you the

1 dates. I was then contacted by a dairy association
2 representative, or maybe -- do you know what, I
3 think it was just a nutritionist that went to all of
4 these dairies to say: People are really concerned.
5 This was, um, new for them, this -- this type of
6 enforcement. And they hadn't been trained in I-9s,
7 um, so could I do kind of an emergency meeting. To
8 my knowledge this may have even -- I don't know how
9 long Nunes has been in the area, but this was awhile
10 ago.

11 Um, and so I gave a training on, just basics of
12 I-9s at that meeting, um, to some dairy families.
13 And after that, some asked me to come on site and
14 help them with their internal I-9 audits. So that's
15 kind of how that practice for me developed. So I
16 would say -- does that answer your question?

17 Q Yes. And if we can pinpoint the point in time, do
18 you know if this was before or after the change in
19 presidential administration in 2016?

20 A Before, I think. I think before.

21 Q And did it relate to a very public case regarding a
22 farmer named Mr. Millenkamp?

23 A No.

24 Q Or after that?

25 A It was -- I'm not familiar -- yeah, no, it was not

1 MR. HUFF: Could I go off the record for a
2 second and just say to everybody: I understood from
3 Sander that that had been provided, but I don't
4 know, I haven't seen --

5 THE COURT REPORTER: Excuse me. Are we off the
6 record?

7 MR. HUFF: I -- I just was trying --

8 THE COURT REPORTER: You said "off the record."
9 If we're going off the record --

10 MR. HUFF: I can keep it off.

11 THE COURT REPORTER: -- the videographer --

12 MR. HUFF: Do you want to go off the record for
13 a moment?

14 MS. HAUSER: Let's go off the record for a
15 moment, sure.

16 MR. HUFF: Okay.

17 THE VIDEOGRAPHER: Okay, no problem.

18 Going -- going off the record at 11:15.

19 (Discussion off the record.)

20 THE VIDEOGRAPHER: And we're back on the record
21 at 11:16 a.m. Central Time.

22 Q (By Ms. Hauser) I'm going to hand the court reporter
23 an exhibit that we're going to mark as Exhibit 121.
24 It bears the Bates stamp PX 4137 to 4138.

25 MR. BISS: Kristen, could you just identify it?

1 Mr. Millenkamp. I don't know if it was before or
2 after because I'm not really familiar with that one.

3 Q I think that may have been in eastern Iowa, which --

4 A Uh-huh.

5 Q -- is probably outside of your practice, geography
6 anyway.

7 A I think I'm placing that case. I think this was
8 slightly before or around the same time.

9 Q Um, had you ever, prior to being contacted by
10 Mrs. Nunes, conducted an I-9 audit in the context of
11 any media reporting?

12 A No.

13 Q Um, do you know about how soon after visiting or
14 hearing -- talking to Mrs. Nunes and receiving the
15 e-mail that's Exhibit 120 that you visited the farm?

16 A I don't remember. Did -- did you get -- I did mean
17 to ask: Did you get our invoice, the bill that we
18 sent for them? The date of the visit would be on
19 that. It was part of the document production.

20 Q I don't have that invoice.

21 MR. BOYER: Maybe we can see if we --

22 Q (By Ms. Hauser) We can talk about it at a break.

23 A Yeah. If you have that, it's -- if not, we can get
24 that to you. But that would be one other document,
25 like the invoice that we sent for them for --

1 What is it?

2 MS. HAUSER: Oh, it's the October 12th letter
3 from Woods Fuller to NuStar Farms. Nate should have
4 sent it to you or he is now.

5 MR. BOYER: No, I did.

6 (Exhibit 121 marked for identification.)

7 Q (By Ms. Hauser) Ms. Bahena, would you take a look at
8 what's been marked as Exhibit --

9 MR. BISS: Just -- just hold on one -- one
10 second. I'm just trying to make sure I've got the
11 right document here. You said 4137 to 4138?

12 MS. HAUSER: Correct.

13 MR. BISS: Okay. All right, I've got it now.
14 Thank you.

15 MS. HAUSER: Thanks.

16 Q (By Ms. Hauser) Ms. Bahena, would you take a look at
17 Exhibit 121?

18 A Yes.

19 Q Do you have that in front of you?

20 A Yes.

21 Q The date on this letter, is this the follow-up
22 letter you sent to Lori Nunes?

23 A Yes.

24 Q The date on this letter is October 12th, 2018. Do
25 you see that?

<p style="text-align: right;">57</p> <p>1 A Yes.</p> <p>2 Q Is it fair to conclude from this document and</p> <p>3 Exhibit 120 that you visited the farm sometime</p> <p>4 between October 2, 2018 and October 12th, 2018?</p> <p>5 A Yes. When was the article published?</p> <p>6 Q The article was September 30th and then your e-mail</p> <p>7 from Lori is October 2nd.</p> <p>8 A Yeah, that's fair to say.</p> <p>9 Q Um, and I think earlier you said you only went to</p> <p>10 the farm one time; is that correct?</p> <p>11 A Right.</p> <p>12 Q Did anyone accompany you to the farm?</p> <p>13 A Yes.</p> <p>14 Q Who accompanied you?</p> <p>15 A My associate at the time, Julie Allen. She no</p> <p>16 longer works here.</p> <p>17 Q Did anyone else go with you?</p> <p>18 A No.</p> <p>19 Q Um, what was the purpose of your visit?</p> <p>20 A I asked Lori to organize her I-9 forms into current</p> <p>21 and former employees and prepare a list of current</p> <p>22 employees and a list, I think, of former employees,</p> <p>23 and I would sit down with her and go through them</p> <p>24 and discuss best practices for I-9 preparation.</p> <p>25 Q Anything else?</p>	<p style="text-align: right;">59</p> <p>1 A I don't remember. I think it was typed. I don't</p> <p>2 remember.</p> <p>3 Q And do you recall approximately how many -- was it a</p> <p>4 list on paper or digitally?</p> <p>5 A Everything was on paper.</p> <p>6 Q And did she, um -- you didn't take a copy of the</p> <p>7 list with you?</p> <p>8 A I did not.</p> <p>9 Q Um, and was there one list of current employees and</p> <p>10 one list of former employees, or was it just one</p> <p>11 list?</p> <p>12 A I don't remember. And I -- I assume there was a</p> <p>13 list because there must have been a list because I</p> <p>14 always ask for a list, but I don't --</p> <p>15 MR. BISS: Objection, move to strike.</p> <p>16 Speculation.</p> <p>17 A Yeah, I can't say with certainty about the list of</p> <p>18 employees if she -- I don't want to put something in</p> <p>19 my memory that may not have happened, so --</p> <p>20 Q (By Ms. Hauser) Did she provide you with a list, a</p> <p>21 printout from QuickBooks or something?</p> <p>22 A I don't remember.</p> <p>23 Q How long was the list?</p> <p>24 A I don't -- I don't remember the list itself. I just</p> <p>25 know we would have checked to make sure each person</p>
<p style="text-align: right;">58</p> <p>1 A No, not that I remember.</p> <p>2 Q And is this the purpose that you communicated to</p> <p>3 Mrs. Nunes or that Mrs. Nunes communicated to you?</p> <p>4 A I don't remember.</p> <p>5 Q Did Mrs. Nunes express to you any concern about a</p> <p>6 possible ICE audit as a result of the news article?</p> <p>7 A I don't remember.</p> <p>8 Q Did Mrs. Nunes express to you that NuStar Farms was</p> <p>9 considering filing a lawsuit over the Esquire</p> <p>10 article?</p> <p>11 A I don't think she had expressed that because I</p> <p>12 probably would have stayed out of it if I had known.</p> <p>13 Q Um, did you ask Mrs. Nunes to organize any</p> <p>14 supporting documentation that was part of the</p> <p>15 employees' files?</p> <p>16 A Not that I recall. I would have -- I would have</p> <p>17 wanted to see I-9s as they were at that point</p> <p>18 without her trying to modify or change anything</p> <p>19 because that can cause problems, so I would have</p> <p>20 just said, "Organize -- get the list of employees</p> <p>21 and organize the I-9s that you have based on that</p> <p>22 list into current and former employees."</p> <p>23 Q And did she provide you with a list of employees?</p> <p>24 A When I arrived, yes.</p> <p>25 Q Was that a handwritten list or a typed-up list?</p>	<p style="text-align: right;">60</p> <p>1 on the list had an I-9.</p> <p>2 Q Okay. And do you recall what info, information</p> <p>3 about the employees were on the list?</p> <p>4 A I don't remember. What I request, and I don't</p> <p>5 remember if this was done exactly, is, um, a list of</p> <p>6 employees with their start dates, and if they're</p> <p>7 terminated, their termination dates, because that</p> <p>8 helps us determine, um, um, like how long I-9s need</p> <p>9 to be retained. But I don't know if that's how the</p> <p>10 list was prepared. I don't remember.</p> <p>11 Q Do you -- looking back at Exhibit 121, do you recall</p> <p>12 if there were any attachments to the letter or was</p> <p>13 it just the letter as is?</p> <p>14 A Just the letter as is. If there was attachments, I</p> <p>15 would have put "ATTN". I always do.</p> <p>16 Q How long -- when you visited the farm, how long did</p> <p>17 you stay?</p> <p>18 A I don't remember exactly. I should have looked at</p> <p>19 that invoice. I -- I think maybe two hours, two to</p> <p>20 three. It was shorter than I expected to need to be</p> <p>21 there.</p> <p>22 Q And when you arrived, had Mrs. Nunes prepared the</p> <p>23 current and former employee I-9s for you to look at?</p> <p>24 A Yes. We met in the office that I think is connected</p> <p>25 to the parlor. Mrs. Nunes and I sat at a desk and</p>

<p style="text-align: right;">61</p> <p>1 she had them in piles in front of us. And Julie</p> <p>2 Allen sat there, too.</p> <p>3 Q What did you discuss first with Mrs. Nunes when you</p> <p>4 arrived?</p> <p>5 A We first just talked a little bit about the article</p> <p>6 and what she does at the dairy. Um, I got the</p> <p>7 impression she just needed to talk a little bit</p> <p>8 about the article to start. And, um, I wanted to</p> <p>9 know how involved she was on the dairy, um, and just</p> <p>10 kind of to put her at ease. I think I was curious.</p> <p>11 Q What did she tell you?</p> <p>12 A Um, she was embarrassed about the article, how she</p> <p>13 was portrayed like physically, um, that she -- she</p> <p>14 expressed that she enjoys life on a dairy but it's</p> <p>15 not easy. Um, I remember she said she helps with</p> <p>16 the calving and a lot of the dairy chores, which,</p> <p>17 um, I appreciated. And outside of that, I don't</p> <p>18 remember more of like the initial conversation. We</p> <p>19 kind of talked about that through the whole audit.</p> <p>20 Q Um, were the -- about how many I-9s were in the --</p> <p>21 were there two piles?</p> <p>22 A I don't remember.</p> <p>23 Q About how many I-9s do you recall looking at?</p> <p>24 A I don't remember. I mean, I can say -- I can't</p> <p>25 speak to how many for terminated employees, but to</p>	<p style="text-align: right;">63</p> <p>1 their I-9 practice, um, putting in safeties to make</p> <p>2 sure I-9s get fully completed, even though it's busy</p> <p>3 on the dairy, and suggesting there be a dedicated</p> <p>4 person to I-9s, because if different people are</p> <p>5 filling them out, it's just more likely that someone</p> <p>6 will not fill it out correctly.</p> <p>7 Then we started going through the I-9s</p> <p>8 themselves, one by one. And I just take a pen and,</p> <p>9 without the point and touch each spot in the I-9.</p> <p>10 And if it looks like there's something that could be</p> <p>11 corrected, we'll mark that, either with a flag or a</p> <p>12 sticky note.</p> <p>13 If it can't be corrected, some things can't,</p> <p>14 um, it is what it is, so we just say, "Look, this --</p> <p>15 this was an issue. And going forward, make sure,</p> <p>16 you know, you have safeties in place that it's not a</p> <p>17 recurring issue."</p> <p>18 And then I talk about how to make the</p> <p>19 corrections. Um, some things she's able to correct</p> <p>20 while we go through them, if it's a missing,</p> <p>21 something on page 2 or an address of the employer,</p> <p>22 things that the employer can correct. And then</p> <p>23 we -- I say, "Make sure you indicate what the</p> <p>24 correction is so it doesn't look like you are</p> <p>25 backdating things or, you know -- yeah, committing</p>
<p style="text-align: right;">62</p> <p>1 my recollection there was an I-9 for every, or</p> <p>2 nearly every employee. I think every.</p> <p>3 Q And when you say there was an I-9 for every</p> <p>4 employee, you mean physically there was a piece of</p> <p>5 paper for each employee?</p> <p>6 A Correct.</p> <p>7 Q And that corresponded to the list she provided?</p> <p>8 A Yes, yes.</p> <p>9 Q Um, did you offer to do anything for NuStar that</p> <p>10 NuStar rejected?</p> <p>11 A Not that I remember.</p> <p>12 MR. BISS: Object to the form.</p> <p>13 Q (By Ms. Hauser) Were there any other pieces of paper</p> <p>14 other than the Form I-9s that you looked at?</p> <p>15 A I'm trying to remember if there were copies of ID</p> <p>16 documents, but I can't say with certainty. It's</p> <p>17 been awhile.</p> <p>18 Q What happened after your initial conversation with</p> <p>19 Mrs. Nunes when you visited the farm?</p> <p>20 A She sat next to me, and I have sticky notes and like</p> <p>21 flags. And first we talked about general I-9</p> <p>22 regulations, storage of, you know, retention</p> <p>23 periods, making sure the right person is filling it</p> <p>24 out, um, you know, if an interpreter is helping, how</p> <p>25 to deal with that, and just learning more about</p>	<p style="text-align: right;">64</p> <p>1 some sort of fraud or something." So, you know, you</p> <p>2 want to initial what you corrected, put an arrow to</p> <p>3 it or circle it or something and make your initial</p> <p>4 and say it's part of a, the date and -- the date</p> <p>5 that you made the correction and that it's part of</p> <p>6 an internal audit, which is the main reason, I mean,</p> <p>7 one of the main reasons I wanted to be there to show</p> <p>8 her how to make those corrections so she wasn't</p> <p>9 trying to correct things on her own, um, and not</p> <p>10 dating and initialing those corrections.</p> <p>11 Q Did you indicate to her to use a different color ink</p> <p>12 in making any corrections?</p> <p>13 A I can't remember. I normally do say that, but if</p> <p>14 we're there and there's corrections that she can</p> <p>15 make under my guidance, then we will use the pen</p> <p>16 that's there, as long as it's clear what you</p> <p>17 corrected and what you didn't is the importance.</p> <p>18 Q Um, if you look at Exhibit 121, the third</p> <p>19 paragraph --</p> <p>20 A Uh-huh.</p> <p>21 Q -- down, I note in your letter it says, "As a</p> <p>22 reminder, for any corrections you make, use a</p> <p>23 different color pen and write 'per internal audit,'</p> <p>24 and date and initial the notation."</p> <p>25 Does that summarize the advice you gave when</p>

<p style="text-align: right;">65</p> <p>1 you were at the farm?</p> <p>2 A Yes. I would have said, "Make it as clear as you</p> <p>3 can." I mean, I don't know if I used those exact</p> <p>4 words, but, "Make it as clear as you can. Date and</p> <p>5 show what you corrected so it doesn't look later, if</p> <p>6 someone is looking through them, that you changed</p> <p>7 this whole I-9 or, you know, things like that."</p> <p>8 So -- so if I said to use a different color pen at</p> <p>9 that time, I don't remember, but, um, yeah, my</p> <p>10 letter says that.</p> <p>11 Q So you said you spoke with her about general I-9</p> <p>12 regulations. What do you recall speaking to her</p> <p>13 about that?</p> <p>14 A Um, the days that you have to -- the date limits</p> <p>15 that you have to complete the I-9. Um, the first</p> <p>16 page of the I-9 the employee completes on or before</p> <p>17 the first day and then page 2 by day three the</p> <p>18 employer completes. Um --</p> <p>19 THE COURT REPORTER: What was that? And then</p> <p>20 what?</p> <p>21 THE DEPONENT: By -- by day three the employer</p> <p>22 needs to complete page 2.</p> <p>23 A Um, making sure that every box is completed. It's a</p> <p>24 surprisingly, um, easy form to miss things. We see</p> <p>25 that all the time. There's just a lot of boxes</p>	<p style="text-align: right;">67</p> <p>1 retain that I-9, which I ran through with them.</p> <p>2 Q And what are those limits?</p> <p>3 A It is a year after the employment is terminated or</p> <p>4 three years after the start date, whichever occurs</p> <p>5 last.</p> <p>6 Q And that's for former employees?</p> <p>7 A Yes. You retain them as long as someone is employed</p> <p>8 with you, and then you can destroy them after those</p> <p>9 dates once they're terminated.</p> <p>10 Q Um, you mentioned that you talked with her about the</p> <p>11 right person filling out the forms. What does</p> <p>12 that -- what did that refer to?</p> <p>13 A I think, if I remember correctly, when we were</p> <p>14 reviewing them, there were different -- I mean,</p> <p>15 various people -- various people had completed the</p> <p>16 employer portion. And I said, "Best practice would</p> <p>17 be a point person does the I-9s so that that person</p> <p>18 can get more familiar with the practice." And it</p> <p>19 seemed that point person was going to be Lori rather</p> <p>20 than several people dabbling in completing I-9s just</p> <p>21 to get it done.</p> <p>22 Q Um, did you communicate to her that the person,</p> <p>23 right person to fill out the form is the person who</p> <p>24 looks at whatever identification documents the</p> <p>25 employee presents?</p>
<p style="text-align: right;">66</p> <p>1 and -- um, crammed into two pages, so making --</p> <p>2 going down and taking the time to make sure</p> <p>3 everything is done. Um, explaining how fines work.</p> <p>4 Um, a lot of employers miss the same box by accident</p> <p>5 over and over and fines get higher based on the</p> <p>6 percentage of I-9s that have errors, so making sure</p> <p>7 you're not making recurring errors. And, um,</p> <p>8 retention, appropriate documents for List A and then</p> <p>9 List B and C.</p> <p>10 And a lot of it we talked through as we went</p> <p>11 through the forms. Because the forms were there, so</p> <p>12 I could say, you know, um, "Make sure this document</p> <p>13 is written in this way" or just generally -- and</p> <p>14 then if she had questions, I'd answer them as best</p> <p>15 as I could. But I don't remember exactly the</p> <p>16 questions. So it was very conversational.</p> <p>17 Q What did you discuss about storage?</p> <p>18 A Um, I recommended they stick with paper storage just</p> <p>19 because they're busy on a dairy and there's a lot of</p> <p>20 requirements with electronic storage. And that's</p> <p>21 what they'd been doing at the time anyways is paper.</p> <p>22 Um, we -- I showed them how to calculate how</p> <p>23 long an I-9 needs to be retained, as long as the</p> <p>24 person is working, and then if they're terminated or</p> <p>25 quit, there's a calculation on, as to how long you</p>	<p style="text-align: right;">68</p> <p>1 A Yes. Because I think it was, if I remember</p> <p>2 correctly, it was a bit of a group effort at that</p> <p>3 time, um, so whoever looked at the physical actual</p> <p>4 documents I told, said should be the one to sign</p> <p>5 them. Because I think there was some copying of</p> <p>6 physical documents and then someone would get a copy</p> <p>7 because they weren't available at the time, to, you</p> <p>8 know, for the employer side portion, and then sign</p> <p>9 based on photocopies. I do remember having</p> <p>10 conversations about that that maybe one person was</p> <p>11 looking at the actual physical documents and taking</p> <p>12 photocopies and then another person, I don't know</p> <p>13 how widespread that was, but was completing the</p> <p>14 employer portion of the I-9. If I remember</p> <p>15 correctly, they thought at some point that it had to</p> <p>16 be like an owner or something of the dairy doing it.</p> <p>17 And I said, "You can appoint an agent to just do the</p> <p>18 whole thing for you so that there's no gaps."</p> <p>19 Q And do you recall whether you learned that Anthony</p> <p>20 Nunes the third was one of the people who had been</p> <p>21 filling out the forms?</p> <p>22 A I remember --</p> <p>23 MR. BISS: Objection, form.</p> <p>24 A I don't remember --</p> <p>25 THE DEPONENT: Sorry.</p>

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1 THE COURT REPORTER: I didn't get the
2 objection.
3 THE DEPONENT: Could you repeat the objection?
4 MR. BISS: Object to the form.
5 **A** I don't remember if it was Anthony Nunes, Junior or
6 Anthony Nunes the Third, but I remember seeing an
7 Anthony Nunes on some of the forms. And I think
8 that's how that conversation came up that Lori
9 can -- Lori can sign them herself if she is the one
10 looking at the actual physical documents and that
11 will make things easier and cleaner.
12 **Q** (By Ms. Hauser) Um, you said you learned more about
13 their practices. What did you learn about their
14 practices?
15 **A** I think it was -- um, based on what I saw, they were
16 getting the first page completed. And then the
17 second page was getting completed, but I wasn't sure
18 if the person actually looking at the physical
19 document was the person signing the forms or if it
20 was based on photocopies. I remember that being one
21 of the key takeaways to say Lori can fill out these
22 I-9s herself. She doesn't have to, like, run
23 somebody down to do that, um, and that maybe she
24 just wants to be the person going forward so she's
25 not trying to track someone down on the dairy who's

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1 not available to get it done.
2 **Q** So was it communicated to you that Lori is the one
3 who physically looks at original documents?
4 **A** I don't remember the extent. I remember that being
5 a conversation, though, to say, "Lori, you can just
6 fill them out yourself. You don't need to run
7 someone down to do it. But that just needs to be
8 your -- you need to decide on a practice, like who
9 is the person going to be."
10 **Q** And did she communicate to you what the practice was
11 before?
12 **A** I don't remember exactly. But I -- I do remember
13 having that conversation that -- I mean, I think she
14 was saying, "Well, sometimes it's hard to find them
15 to sign," or something like that. Like, it was not
16 the cleanest most efficient way to get these I-9s
17 filled out, and, um, that's why I just said, "Hey,
18 Lori, if you're the one learning about this and
19 doing this, you can be the point person," I just
20 remember talking about that, "if that's what you
21 guys decide to do."
22 **Q** Um, did she communicate to you that their practice
23 was for Anthony Nunes the Third to inspect forms,
24 I- -- excuse me, inspect identification documents,
25 um, and make the photocopy and then give that to

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1 Lori?
2 MR. BISS: Asked and answered. She said she
3 didn't remember.
4 **A** Yeah, I don't remember. I don't remember.
5 **Q** (By Ms. Hauser) Was there anything else you learned
6 about their practices?
7 **A** Not that I remember.
8 **Q** Did you learn that NuStar Farms did not fill out
9 parts of Section 2 on Form I-9 as part of --
10 MR. BISS: Asked and answered. Said she didn't
11 remember.
12 **A** If there were any that I reviewed that weren't
13 filled out, I would have put a note on to follow up
14 and get them completed.
15 **Q** (By Ms. Hauser) Are there any sections on Form I-9
16 that don't need to be filled out?
17 **A** Yes.
18 **Q** What sections?
19 **A** Um, I should have an I-9 in front of me. For
20 example, on page 1 -- and it depends on the version.
21 That's the other issue, they're always changing the
22 layout.
23 I mean, one that comes to mind is if a
24 translator or interpreter wasn't used, you don't
25 fill out the translator interpreter section. And

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1 then you only have to do either a List A or a List B
2 and C. But it would be, I think looking at the
3 form, clear which ones aren't always required.
4 There's a reverification section that only gets
5 filled out if you reverify the person, so ...
6 **Q** And did you advise anyone at NuStar Farms to fill
7 out the reverification section as part of the
8 corrections?
9 **A** I don't remember if it was part of the corrections.
10 But if someone had had an I-9 filled out with a,
11 what was then, like, upon audit review an expired
12 work permit, I would have flagged that to go and get
13 a new work permit for the person to reverify them.
14 Um, and then we would have talked about the
15 reverification section saying -- because I always
16 warn people, "You don't reverify green cards, but
17 work permits you reverify." And that's important
18 that they know the difference because if you ask to
19 reverify a green card, you can actually land into
20 discrimination issues, so ...
21 **Q** And so just to complete that, a work permit is a
22 photo identification card that's not a green card;
23 is that fair, in general?
24 **A** No. A work permit is an employment authorization
25 document issued by the USCIS.

<p style="text-align: right;">73</p> <p>1 Q And so which ones would be expired versus a green card?</p> <p>2</p> <p>3 A An employment authorization document is typically valid from one to three years, sometimes four. And those need -- those are temporary work authorizations. So when they expire, the employer needs to request a new unexpired either work permit or other type of authorization document to continue to lawfully employ that individual.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Q Did you see any such photocopies of those documents when you visited NuStar Farms?</p> <p>11</p> <p>12 A I don't remember.</p> <p>13 Q Um, we've handed you what's previously been marked as Defendants' Exhibit 89, which is a blank I-9 form.</p> <p>14</p> <p>15</p> <p>16 Do you see that --</p> <p>17 A Yes.</p> <p>18 Q -- form? Taking a look at section 1, is section 1 the portion of the form that should be filled out by the employee?</p> <p>19</p> <p>20</p> <p>21 A Yes, section --</p> <p>22 MR. BISS: Objection, in- -- I'm sorry, I interrupted. I'm sorry.</p> <p>23</p> <p>24 THE DEPONENT: You can do your objection now.</p> <p>25</p> <p style="text-align: right;">Go forward.</p>	<p style="text-align: right;">75</p> <p>1 A I don't believe so.</p> <p>2 Q (By Ms. Hauser) Did you advise anyone at NuStar Farms that they should correct the date of birth section if it was blank?</p> <p>3</p> <p>4</p> <p>5 A I would have said: Go ask the employee to fill out the date of birth, initial and date that correction.</p> <p>6</p> <p>7 Q You didn't advise Mrs. Nunes to fill that out and initial it herself?</p> <p>8</p> <p>9 A No.</p> <p>10 Q And I believe what you were alluding to before is there's a section in section 1 called "Preparer and/or Translator Certification." That section does not need to be filled out if no preparer or translator assisted; is that correct?</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 A Correct.</p> <p>16 Q If you turn the page to section, page 2 of 3, there's a section called "Employer or Authorized Representative Review and Verification" as part of section 2. Are there any boxes in section 2 that do not need to be filled out?</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 MR. BISS: Objection, inadmissible opinion.</p> <p>22 A I mean, if it's a List A document you don't fill out B and C. If it's a B and C document, you don't fill out List A. But everything else gets filled out, um, through section 2.</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">74</p> <p>1 MR. BISS: Objection, inadmissible opinion.</p> <p>2 A Yeah, section 1 through signature of employee gets filled out, the applicable portions.</p> <p>3</p> <p>4 Q (By Ms. Hauser) Right. And what -- um, is there -- are there any blanks or boxes in section 1 that do not need to be filled in?</p> <p>5</p> <p>6</p> <p>7 MR. BISS: Same objection.</p> <p>8 A Um, e-mail address, in some cases telephone number, other last names used, if any, um, and then you select boxes 1 through 4 and you only fill out the, below that and you only fill out the applicable information for that box. And then you sign -- then the employee signs and dates.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Q (By Ms. Hauser) And section -- may the employer fill out any portions of section 1?</p> <p>15</p> <p>16 A No.</p> <p>17 MR. BISS: Objection, inadmissible opinion.</p> <p>18 A No.</p> <p>19 Q (By Ms. Hauser) Did you advise --</p> <p>20 A Oh, wait. Unless they fill out the preparer. If they're helping as the preparer, they can fill it out.</p> <p>21</p> <p>22</p> <p>23 Q Oh, yes. May the employer fill in, for example, the date of birth in section 1?</p> <p>24</p> <p>25 MR. BISS: Objection, inadmissible opinion.</p>	<p style="text-align: right;">76</p> <p>1 Q (By Ms. Hauser) And did you advise anyone at NuStar Farms that they did not need to fill out the List B or List C section and instead they could maintain photocopies of identification cards?</p> <p>2</p> <p>3</p> <p>4</p> <p>5 A So I don't remember if I said this or not, but if that question came up, like if List B and C is not filled out, in my experience if there's an ICE audit and there's a photocopy attached, then they will allow you -- like, they won't count it as what we call a substantive error. They will say that corrects the lack of completion of B and C. It's not ideal practice. Ideal practice is to have B and C completed. But if there's a photocopy attached to the I-9, then in my experience they will not count that as a substantive error and they will allow that to be corrected and you will not be fined on that. But you still need to fill out the rest of the attestation. But that's not -- like I said, I wouldn't advise to do that practice, but a blank B and C with a photocopy attached of the documents is better than a blank B and C with no photocopy attached.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Q And did you advise NuStar that going forward they should continue to retain photocopies and not fill in section 2?</p> <p>24</p> <p>25</p>

<p style="text-align: right;">77</p> <p>1 A No. And if that's what they were doing, I'm afraid</p> <p>2 they misunderstood me if that's what they think I</p> <p>3 said. I have not talked to them since the audit.</p> <p>4 Um, I would have said: If you keep photocopies, you</p> <p>5 have to do it for all of your employees and be</p> <p>6 consistent. You don't have to complete -- keep</p> <p>7 photocopies.</p> <p>8 And, yeah, like, in my experience, if B and C</p> <p>9 isn't completed and there's an audit, photocopies</p> <p>10 can help you reduce your fines that way, but I</p> <p>11 wouldn't have advised them to leave B and C blank on</p> <p>12 the form.</p> <p>13 Q Was filling in the A, B or C section something you</p> <p>14 advised NuStar Farms to correct after your visit?</p> <p>15 A Can you rephrase that?</p> <p>16 Q Sure. If you encountered blanks in section 2 in the</p> <p>17 A, B or C document section, did you advise NuStar to</p> <p>18 make corrections in that section?</p> <p>19 A Yes, but that gets complicated because the person</p> <p>20 who inspected the document should then, in my mind,</p> <p>21 make that correction ideally. So I would have said:</p> <p>22 Ideally the person who inspected the document make</p> <p>23 that correction, initial and date it. Um, but</p> <p>24 another person could use the copy, fill in List B</p> <p>25 and C, initial and date it. That may have come up.</p>	<p style="text-align: right;">79</p> <p>1 MS. HAUSER: No, not at all.</p> <p>2 MR. BISS: That's what you're doing, you're</p> <p>3 trying to suggest an answer and get her to bite on</p> <p>4 one number. You go one, two, three, for all day, up</p> <p>5 to infinity.</p> <p>6 MS. HAUSER: When it's your turn to ask her</p> <p>7 questions, you can ask her if you want to know one,</p> <p>8 two, three, four, five, six. That's not what I'm</p> <p>9 asking.</p> <p>10 MR. BISS: I'm satisfied -- when someone tells</p> <p>11 me, "I don't remember," I'm satisfied that she</p> <p>12 doesn't remember. So I wouldn't do what you're</p> <p>13 doing. But, you know...</p> <p>14 MS. HAUSER: Thanks for the advice.</p> <p>15 MR. BISS: You're welcome.</p> <p>16 A If -- if we're current employees, I would say -- I</p> <p>17 mean, it's a very rough estimate, but I would say</p> <p>18 somewhere between like, oh, my goodness, 40 to 60</p> <p>19 current.</p> <p>20 Terminated employees, I do not remember. It</p> <p>21 would -- we would have slowly dredged through them</p> <p>22 over the course of two to three hours. And it took</p> <p>23 some time.</p> <p>24 Q (By Ms. Hauser) Um, did you advise NuStar that they</p> <p>25 are not allowed to ask any questions whatsoever</p>
<p style="text-align: right;">78</p> <p>1 And because of -- it sounded like in some I-9s one</p> <p>2 person inspected the document, photocopied and then</p> <p>3 another person filled out the verification at the</p> <p>4 end, so that was -- I don't recall the exact</p> <p>5 conversation, but it -- it was a little more nuance</p> <p>6 in that situation if someone, if one person had</p> <p>7 inspected a physical document and then another</p> <p>8 person filled out the attestation.</p> <p>9 Q Do you recall approximately how many I-9s you looked</p> <p>10 at?</p> <p>11 A I don't remember.</p> <p>12 Q Was it more than 50?</p> <p>13 MR. BISS: Objection, asked and answered. Said</p> <p>14 she didn't remember.</p> <p>15 MS. HAUSER: Steve, you know I'm allowed to try</p> <p>16 to refresh the witness's recollection.</p> <p>17 MR. BISS: No, you're not.</p> <p>18 MS. HAUSER: And asked and answered isn't a</p> <p>19 proper --</p> <p>20 MR. BISS: She said she doesn't have a</p> <p>21 recollection.</p> <p>22 MS. HAUSER: -- objection.</p> <p>23 MR. BISS: She doesn't have a recollection.</p> <p>24 She said, "I don't remember," and you're just trying</p> <p>25 to suggest an answer. That's all you're doing.</p>	<p style="text-align: right;">80</p> <p>1 about identification documents presented by the</p> <p>2 employee?</p> <p>3 A No, but I did -- I would have told them -- I did not</p> <p>4 advise them that, but I would have told them:</p> <p>5 You're anxious. Be cautious. And don't be</p> <p>6 discriminatory. If a document looks correct on its</p> <p>7 face, you may accept that document. If there's a</p> <p>8 reason to believe, a valid reason, something looks</p> <p>9 very wrong in this document, um, then -- then you</p> <p>10 should -- you can ask further. And -- and if it</p> <p>11 looks like a fake document, then you have a duty to</p> <p>12 look into that. But if a document looks good on its</p> <p>13 face, um, you can accept that document without</p> <p>14 further inquiry, unless you have reason to believe</p> <p>15 that the worker is presenting you with a false</p> <p>16 document.</p> <p>17 Q Um, did you --</p> <p>18 A Sorry, and I would say -- and I warn them that</p> <p>19 reason can't be because they have an accent or, you</p> <p>20 know, the color of their skin. You have to be</p> <p>21 careful.</p> <p>22 Q Um, did you advise them that they could accept an</p> <p>23 identification document that had a name on it that</p> <p>24 was different from the name the employee entered on</p> <p>25 Form I-9?</p>

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1 **A A completely different name or a misspelling?**
2 Q I'll give you an example.
3 MR. BOYER: What are we up to?
4 MS. HAUSER: 122. Can I have one for the court
5 reporter?
6 MR. BOYER: Sure.
7 MR. HUFF: Thanks.
8 MS. HAUSER: Will you mark this?
9 The court reporter is going to mark
10 Exhibit 122, which is a document bearing the Bates
11 numbers PX 3164 through 3167.
12 MR. BISS: Kristen, do I have that document?
13 MS. HAUSER: Nate is sending you it right now.
14 Sorry, I skipped around in my outline.
15 MR. BISS: No worries. No worries.
16 MR. HUFF: Exhibit 122.
17 Q (By Ms. Hauser) Ms. Bahena, have --
18 THE COURT REPORTER: Excuse me.
19 MS. HAUSER: Oh, sorry, you're not done. Nope,
20 no worries.
21 (Exhibit 122 marked for identification.)
22 Q (By Ms. Hauser) Ms. Bahena, the court reporter has
23 handed you exhibit, Defendants' Exhibit 122. I'll
24 refer you to section 1. Do you see that the
25 employee has entered the name [REDACTED]

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1 [REDACTED] Do you see that?
2 **A Yes.**
3 Q And if you flip to page 3166, do you note that the
4 name on both the Minnesota identification card and
5 the Social Security card is [REDACTED]
6 [REDACTED]
7 **A I do see that.**
8 Q And do you see that on page 3165 NuStar Farms made
9 some corrections to this Form I-9 in section 2?
10 **A Yes.**
11 Q And that the name that Mrs. Nunes added at the top
12 of section 2 matches the name on the front of the
13 I-9?
14 **A Yes.**
15 Q Is this an identification or a Form I-9 with
16 supporting identification that you recall reviewing
17 at the time of your audit?
18 **A I don't recall reviewing this specific one or any of**
19 **the names, but given the date, I would assume it**
20 **would have been in the pile of reviewed documents**
21 **that we would have noted for correction.**
22 Q And do you recall whether you or your associate
23 noticed that the names didn't match?
24 **A I don't recall if we noticed that the names didn't**
25 **match. I may have missed the mismatch.**

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1 Q Um, looking at it today, um, would an employer be
2 obligated to ask an employee a question about these
3 identification forms if they don't match the name
4 the employee himself entered in section 1?
5 **A I would say --**
6 MR. BISS: Objection, speculation, inadmissible
7 opinion.
8 **A If they noticed the mismatch of the name, it would**
9 **raise questions that I would advise them to follow**
10 **up on: Why is -- you know, is this a nickname or is**
11 **this not actually the documents and ask them to**
12 **correct the I-9 with their true legal name. I may**
13 **have missed the mismatch.**
14 Q Is -- is matching names something that you advise
15 employers to look out for when accepting documents?
16 **A I do --**
17 MR. BISS: Objection, inadmissible opinion.
18 **A I do advise them to watch how the employees fill out**
19 **the first section because there are a lot of low**
20 **literacy employees, um, and I've seen employees**
21 **barely be able to spell their own names right or**
22 **leave out a second last name, so I do advise, "Make**
23 **sure that, you know, the employee seems to have**
24 **filled out section 1 correctly as well."**
25 Um, but specifically comparing the name -- I

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1 mean, more for accuracy purposes. I guess I haven't
2 run across it myself in like where it showed a
3 fraud.
4 Q But looking at it today, it's certainly one you
5 would advise a client to ask some more questions?
6 **A Yes, yes. And --**
7 MR. BISS: Objection, inadmissible opinion.
8 **A And I may have missed a mismatch.**
9 Q (By Ms. Hauser) Um, does seeing this document or any
10 of your earlier testimony refresh your recollection
11 that you did review identification forms photocopies
12 when you visited NuStar Farms?
13 **A I still don't remember. I just don't remember the**
14 **exact, if they were attached or not. But given that**
15 **List B and C were blank here, I would have either**
16 **flagged them -- I mean, I would have flagged them to**
17 **fill out List B and C but -- hmm, I -- sorry, I just**
18 **don't remember if some had photos, none or all had**
19 **photocopy documents. Where is my letter?**
20 MS. HAUSER: I'm going to hand the court
21 reporter two documents. Exhibit 123 is a document
22 bearing Bates number 3108 to 3111.
23 (Exhibit 123 marked for identification.)
24 MS. HAUSER: And Exhibit 124 is a document
25 bearing Bates numbers PX 4187 to PX 4188.

1 (Exhibit 124 marked for identification.)
 2 MR. BISS: Kristen, are these documents that
 3 are on their way?
 4 MS. HAUSER: Yep.
 5 THE VIDEOGRAPHER: This is the videographer.
 6 In about five minutes we have to change the tape.
 7 MS. HAUSER: Steve, let me know when you've got
 8 it.
 9 MR. BISS: Yeah, I just -- I just got it.
 10 Q (By Ms. Hauser) Ms. Bahena, would you take a look at
 11 Exhibit 123?
 12 A Uh-huh.
 13 Q Um, do you note that in section 1, the employee
 14 listed his name as [REDACTED] and that his
 15 signature is [REDACTED]?
 16 A Yes.
 17 Q And do you notice on page 3110 the name appears to
 18 match the signature but not, um, the name in
 19 section 1?
 20 A Yes.
 21 Q Do you recall seeing this employee's I-9 and
 22 supporting documents when you visited NuStar Farms?
 23 A I do not recall seeing this specific I-9, but given
 24 the dates and the note, I -- it's -- it was probably
 25 in the pile of I-9s we reviewed.

1 Q And if you look at Exhibit 124 --
 2 A Uh-huh.
 3 Q -- um, do you see this is the Form I-9 for that same
 4 employee?
 5 A Yes.
 6 Q And do you see it has some red pen in section 1 with
 7 an initial?
 8 A Yes.
 9 Q Did you -- but you're sure you didn't advise
 10 Mrs. Nunes to correct section 1?
 11 A Well, this looks like it was for a terminated
 12 employee potentially. I don't know for sure.
 13 There's a sticky note on it. So it looks like I'm
 14 seeing "S," like start date, "June 16."
 15 Terminate -- "T" would likely be termination,
 16 "September 16. Shred July 2019." So I'm thinking
 17 this is in the pile of terminated employees, in
 18 which case we would have said, "You're not going to
 19 get this employee to fill this out. If you make
 20 corrections to finish it, make sure you initial it."
 21 So if the employee is willing to, you fill out
 22 the first page. Um, but if you're going to fill out
 23 the first page, initial it. And here it's a
 24 terminated employee. So ICE is going to come back
 25 and ask for this information if they audit. So I

1 guess my advice would be different if it's a
 2 terminated employee and you want to provide ICE with
 3 the information they need to be able to verify
 4 someone.
 5 Um, so, yeah, I -- I should have couched that
 6 in: Have the -- have the team -- the employee fill
 7 it out, um, and initial and date. Any changes the
 8 employer -- the employer makes to -- to -- to
 9 section 1 should be highly notated.
 10 Um, is it illegal for the employer to fill out
 11 section 1? No. So in a terminated employee case
 12 like this where the employee is not going to
 13 complete it, I feel it's appropriate that she filled
 14 in this in a different color ink and initialed it.
 15 Q And does it raise any concerns for you that the
 16 employee signed one name and wrote his name in
 17 section 1 and in section 2 with a name that doesn't
 18 match his identification form?
 19 A Yes.
 20 MR. BISS: Objection, inadmissible opinion.
 21 A Yes. If this had been a current employee, I would
 22 have advised them to follow up. And if necessary --
 23 if it turns out that they're undocumented, terminate
 24 them. But this was a terminated employee, so, um,
 25 at that point it was a nonissue. Um, and I...

1 Q (By Ms. Hauser) Meaning it was a nonissue --
 2 THE VIDEOGRAPHER: I --
 3 Q (By Ms. Hauser) -- because they couldn't do anything
 4 about it anymore?
 5 A Right. The employee was no longer there, so they
 6 wouldn't have -- they would have no right at that
 7 point to go and ask them anyway, so what was done
 8 was done.
 9 MS. HAUSER: Let's go off the record to change
 10 the tape.
 11 THE VIDEOGRAPHER: Thank you.
 12 This ends media unit number 2 of the video
 13 recorded Zoom deposition of Amanda Bahena.
 14 We are going off the record at 12:11 p.m.
 15 Central Time.
 16 (Lunch recess.)
 17 THE VIDEOGRAPHER: This begins media unit
 18 number 3 in the video recorded Zoom deposition of
 19 Amanda Bahena.
 20 We are back on the record at 1:13 p.m. Central
 21 Time.
 22 Q (By Ms. Hauser) Good afternoon, Ms. Bahena. Um, I'm
 23 going to hand you what the court reporter has
 24 previously, in earlier depositions, marked as
 25 Deposition Exhibit 23.

1 Ms. Bahena, first, do you recall whether this
2 is an I-9 and supporting documents you reviewed as
3 part of your I-9 audit at NuStar?

4 **A I don't remember.**

5 **Q** And if I can direct your attention to page 3197,
6 which is the third -- sorry, excuse me, 3196, which
7 is the second page, do you note that on the
8 photocopy of United States of America Permanent
9 Resident Card the employee's surname is spelled
10 [REDACTED] and on the photocopy of the Social
11 Security card the employee's last name is spelled
12 [REDACTED] Do you see that?

13 **A I do see that.**

14 **Q** And before the break we were talking about
15 identification cards that may have not matched the
16 name on form -- in -- in part 1 on Form I-9.

17 Do you see that the employee on page 1 of this
18 document spelled the last name with [REDACTED],
19 I can't tell, can you?

20 **A I can't tell what the letter is. There's --**
21 **there's -- I mean, I would normally read [REDACTED]**
22 **with an [REDACTED] so that's what I would have read it as,**
23 **an [REDACTED]**

24 **Q** And would this be -- looking at the photocopies of
25 the identification cards, is having mismatched

1 **A I can't say that if, that they noticed the**
2 **misspelling on that that it's a [REDACTED] and not an [REDACTED]**
3 **I don't know if I caught the misspelling that it's a**
4 **[REDACTED] and not an [REDACTED]" um, so I can't speak to when**
5 **they saw the document at the time, their state of**
6 **mind or anything like that. But if they noticed,**
7 **then I would advise them, if they asked me, to**
8 **follow up with the employee, because, yeah, there's**
9 **an error or issue with the name on the card, that it**
10 **doesn't match the name on the ID.**

11 Um, this is -- this employee presented a
12 permanent resident card as well, so technically the
13 Social Security card wasn't required for the I-9, if
14 that matters, but I would have still said, you know:
15 Follow up with the Social Security card, um, if I
16 noticed a misspelling.

17 **Q** (By Ms. Hauser) And would this have raised -- if you
18 had -- you don't recall whether you noticed or not
19 at the audit?

20 **A I don't remember. And, frankly, I may have saw that**
21 **the -- I mean, looking at it now, as I would have**
22 **looked, I would have said: Oh, you didn't fill out**
23 **List A. This is how I would have handled it, most**
24 **likely: The green card -- a copy of the green card**
25 **is attached, um, so you may -- you should go back,**

1 surnames on the two forms of ID presented by the
2 employee something that should cause an employer to
3 ask more questions of the employee about his
4 identification documents?

5 **A I would --**

6 MR. BISS: Objection, speculation, inadmissible
7 opinion.

8 **A If I -- if I noticed the misspelling, I would**
9 **have -- I would advise them to follow up on that and**
10 **ask if, which is the correct spelling or -- or ask**
11 **for more information.**

12 **Q** (By Ms. Hauser) And if you -- as part of the
13 certification section on the Form I-9 by the
14 employer, that's important because one thing the
15 employer is certifying is that the documents relate
16 to the employee; is that correct?

17 MR. BISS: Objection, inadmissible opinion.

18 **A I would say the certification states that the**
19 **above-listed documents appear to be genuine and to**
20 **relate to the employee named.**

21 **Q** (By Ms. Hauser) Right.

22 **A So yes.**

23 **Q** And do both of these -- how do we know if, which of
24 these documents relates to the employee named here?

25 MR. BISS: Objection, speculation.

1 you know, whoever looked at the card and fill out
2 List A, initial and date it as a correction.

3 But I don't know if I would have actually gone
4 down to the Social Security card because the List A
5 document would have been a green card. So my big
6 comment on this one would be the List A document,
7 space is blank.

8 **Q** And it looks like this has a "per audit" notation on
9 page 1.

10 Do you see that?

11 **A Yes.**

12 **Q** And it appears as if -- and would you have expected
13 that to be in the different color pen or -- that you
14 advised in your letter?

15 **A Without -- without seeing it, I don't know what**
16 **color they would have used. I mean, that's not a**
17 **legal requirement. I just like --**

18 **Q Right.**

19 **A -- it to be clear what changes they're making.**

20 **Q** Um, and it appears they did not correct it by
21 filling in anything on List A. Do you see that?

22 **A Correct.**

23 **Q** And you can put that one aside.

24 **A Okay.**

25 **Q** Um, going back to the logistics of your visit to

<p style="text-align: right;">93</p> <p>1 NuStar, um, do you recall if you asked to see copies</p> <p>2 of other documents like W-4s or payroll reports?</p> <p>3 A No --</p> <p>4 Q Um --</p> <p>5 A -- I would not have asked to see those.</p> <p>6 Q Do you recall if there was anything you asked to see</p> <p>7 that they didn't have available?</p> <p>8 A No. I only asked to see the I-9s. And we reviewed</p> <p>9 the I-9s that they provided.</p> <p>10 Q What advice did you give to NuStar, if any, about</p> <p>11 what it means to inspect the, excuse me,</p> <p>12 authorization documents presented by the employee?</p> <p>13 A So in my binder that I take to I-9s, because it has</p> <p>14 some guidance that I sometimes refer to if I'm not</p> <p>15 sure how to, you know, if a new situation comes up,</p> <p>16 it has my sticky notes, there is from ICE, I think</p> <p>17 Brent Stanley gave it to me, um, a pamphlet. I</p> <p>18 didn't leave it with them because I only have one.</p> <p>19 I should get more. But there's a pamphlet on</p> <p>20 reviewing documents. Um, it's pretty brief. And</p> <p>21 there's some online things. Um, so I said, "To be</p> <p>22 prudent and to make -- you know, um, you can</p> <p>23 familiarize yourself with, um, some documents, but</p> <p>24 you're not required to be an expert on them. Um,</p> <p>25 like there's pamphlets like, you know, like this.</p>	<p style="text-align: right;">95</p> <p>1 A I don't remember. I would have just said, you know,</p> <p>2 they need to -- if -- "If something doesn't look</p> <p>3 right on its face, you need to follow up. And</p> <p>4 that's a common sense type thing. But you can</p> <p>5 certainly do more training because you may -- you</p> <p>6 may be able to recognize some documents if you do</p> <p>7 further training, but it's not required."</p> <p>8 Q Did you describe to them any examples of documents</p> <p>9 that look fraudulent on their face?</p> <p>10 A Not that I remember.</p> <p>11 Q Did you come across any documents in your review,</p> <p>12 copies of which did not look genuine on their face?</p> <p>13 A I don't remember, but if I had I probably would have</p> <p>14 set them aside if they popped out at me, but I don't</p> <p>15 remember. If they were terminated employees, I may</p> <p>16 have said: This one looks off. But we wouldn't</p> <p>17 have done anything about it because they were</p> <p>18 terminated employees.</p> <p>19 Q Did you review any documents, um, where, um, NuStar</p> <p>20 had accepted Social Security cards that said they</p> <p>21 were valid for work only with DHS or INS</p> <p>22 authorization?</p> <p>23 A I don't remember if I had seen those. And it was</p> <p>24 used as a List C document with a List B, then I</p> <p>25 would have marked that for follow-up. If it was</p>
<p style="text-align: right;">94</p> <p>1 There's online stuff. And -- and ICE, as far as I'm</p> <p>2 aware, will come in and do trainings," but, um,</p> <p>3 that's about as far as that went. I didn't go into</p> <p>4 training on recognizing documents, um, with them.</p> <p>5 I -- I saw the -- the review as like a point in time</p> <p>6 in giving some advice to practices going forward.</p> <p>7 Um, and we didn't do any in-depth training on</p> <p>8 recognizing fake documents from valid ones.</p> <p>9 Q Did you discuss whether or not the birth date on the</p> <p>10 employee's identification document should match the</p> <p>11 birth date that the employee puts in Form I-9,</p> <p>12 section 1?</p> <p>13 A I don't remember discussing that.</p> <p>14 Q Do you recall reviewing any I-9 forms with, at</p> <p>15 NuStar where the birth date on the ID did not match</p> <p>16 the birth date the employee filled out on Form I-9?</p> <p>17 A I don't remember discussing or seeing those.</p> <p>18 Sometimes employees from different countries will</p> <p>19 flip the month and the date. That's the most common</p> <p>20 issue. Um, but other than that, no, I don't</p> <p>21 remember -- well, I don't remember anything specific</p> <p>22 to this audit.</p> <p>23 Q Um, you said you didn't do any training with NuStar</p> <p>24 about how to recognize fake work authorization</p> <p>25 documents. Did anyone at NuStar ask you about that?</p>	<p style="text-align: right;">96</p> <p>1 used -- if they had presented a List A document, I</p> <p>2 would not have marked that for follow-up.</p> <p>3 Q Sorry, I jumped out of order.</p> <p>4 A Also if it was a terminated employee, I would not</p> <p>5 have marked for follow-up because you can't at that</p> <p>6 point.</p> <p>7 MS. HAUSER: Steve, this next one is coming.</p> <p>8 It's already marked. I've just handed the witness a</p> <p>9 exhibit that's previously been marked as Defendants'</p> <p>10 Exhibit 33.</p> <p>11 Q (By Ms. Hauser) And, Ms. Bahena, I'll refer you to</p> <p>12 the third page Bates stamped PX 3544 where there's a</p> <p>13 photocopy of an ID that says, "Valid for Work Only</p> <p>14 with DHS Authorization."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Do you recall reviewing this as part of your audit?</p> <p>18 A I don't recall this specific I-9.</p> <p>19 Q And you'll note that it was presented with a</p> <p>20 Minnesota driver's license. Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And are these acceptable documents together to show</p> <p>23 that the employee is authorized to work in the</p> <p>24 United States?</p> <p>25 A For this --</p>

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1 MR. BISS: Objection, inadmissible opinion.

2 **A** For this one, if this is -- if this were the

3 documents he showed for the I-9, I don't know,

4 because there's a W-4 here as well, but if these

5 were the documents that were shown for the I-9, um,

6 the List C Social Security card would only be valid

7 for a List C document if it had -- didn't have the

8 "Valid for Work Only with DHS Authorization,"

9 unless -- well, yeah, unless they presented a List A

10 document.

11 **Q** (By Ms. Hauser) And do you note also that the

12 employee filled out his name on page 1 with a [REDACTED]

13 and the name on the identification document starts

14 with a [REDACTED] um, would these circumstances have

15 caused, should have caused the employer to ask more

16 questions about this employee's documents?

17 MR. BISS: Objection, speculation, inadmissible

18 opinion.

19 **A** Yeah, if I'd noticed -- if I noticed, and I don't

20 remember if I reviewed this I-9 or set it aside,

21 but, um, that it was, [REDACTED] with a [REDACTED] and [REDACTED]

22 with a [REDACTED] I would have flagged it to ask them to

23 correct the legal name or follow up with them, but

24 also to ask for either a List A document or an

25 unrestricted Social Security card.

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1 **Q** (By Ms. Hauser) And if this was a former employee,

2 do you recall if this is one you set aside and said

3 was problematic?

4 **A** If it was --

5 MR. BISS: Asked and answered.

6 **A** If it was a terminated employee, I wouldn't have set

7 those aside because there was nothing you can do at

8 that point. They're not going to -- I mean, you --

9 you just retain them and the employee is gone, so

10 you can't make employees add corrections at that

11 point.

12 **Q** (By Ms. Hauser) Sorry, let me reask. Did you -- is

13 this one of the documents that you told NuStar was

14 problematic?

15 **A** I don't remember.

16 **Q** Looking at it today, does it appear to be

17 problematic to you right now?

18 MR. BISS: Objection, inadmissible opinion.

19 **A** With the difference between the [REDACTED] and the

20 [REDACTED] um, and the restriction on the social, if

21 that's what was presented for the I-9, um, then

22 they -- I would have advised them to follow up with

23 the employee.

24 **Q** (By Ms. Hauser) But if we -- if -- if we know that

25 this employee worked at NuStar, um, and no longer

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1 worked there, it appears NuStar improperly accepted

2 a restricted Social Security card as proof of work

3 authorization based on the documents produced to us

4 in the litigation.

5 MR. BISS: Objection, inadmissible opinion and

6 just egregiously leading questions. They're not

7 even questions; they're just statements by Counsel.

8 **A** I would note that the attestation doesn't appear

9 completed either, so I can't attest to what

10 documents were reviewed when this I-9 was completed,

11 so ...

12 MS. HAUSER: What number are we up to?

13 THE COURT REPORTER: 125.

14 MS. HAUSER: Steve, this one is on its way.

15 I'm going to ask the court reporter to mark as

16 Exhibit 125 a document bearing PX 4046 to 4049.

17 (Exhibit 125 marked for identification.)

18 **Q** (By Ms. Hauser) Ms. Bahena, would you take a look at

19 Exhibit 125?

20 **A** Yes.

21 **Q** Um, and if you -- if I can direct you to page 4048,

22 do you see that the documents attached or produced

23 to us with this Form I-9 also contain a Social

24 Security card that says it's valid for work only

25 with INS authorization, do you see that?

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1 **A** Yes.

2 **Q** And that there's also a copy of an Iowa

3 identification card. Do you see that as well?

4 **A** Yes.

5 **Q** Are those two documents together sufficient to

6 authorize an employee to work in the United States?

7 **A** No.

8 MR. BISS: Objection, lack of foundation,

9 inadmissible opinion.

10 **A** The Social Security card has a restriction, so

11 they'd either have to show a different List C

12 document or a List A document.

13 **Q** (By Ms. Hauser) And do you recall whether you

14 reviewed this Form I-9 and supporting documents in

15 your audit at NuStar?

16 **A** I do not remember.

17 **Q** And do you see on page 1 the employee did not check

18 any of the boxes under the section, "I attest, under

19 penalty of perjury, that I am (check one of the

20 following)"?

21 **A** I see that.

22 **Q** Um, and does ICE consider that failure a serious I-9

23 violation?

24 **A** That would be a --

25 MR. BISS: Objection, speculation, inadmissible

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1 opinion.

2 **A That would be a substantive, um, error.**

3 Q (By Ms. Hauser) And, again, this one also has no

4 certification or signature from the employer and

5 nothing filled out in section 2, do you see that?

6 **A I see that.**

7 Q Would that also be a serious or substantive

8 violation?

9 **A Um --**

10 MR. BISS: Objection, inadmissible opinion,

11 speculation.

12 **A Assuming this employee was hired, that would be a**

13 **substantive violation. In that situation they would**

14 **have until day three of employment to complete that.**

15 **I don't know if they got that far.**

16 Q (By Ms. Hauser) Do you recall, and Steve will let me

17 know if I already asked this, but do you recall

18 whether you reviewed any Forms I-9 and supporting

19 documents at your audit that had restricted Social

20 Security cards?

21 **A I don't remember offhand.**

22 Q Um, are you aware of whether there were I-9s in

23 NuStar's possession that you did not review?

24 **A I don't know. I reviewed what they provided to me.**

25 Q And did you have occasion to ask: Is this

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1 everything?

2 **A Yeah, I asked if -- I -- well, I told them, "Provide**

3 **all of your I-9s."**

4 Q Ahead of the audit you didn't say: Provide only

5 those that are one year and three years in the

6 non-purge stage?

7 **A No. I said, "Provide all of your I-9s," because I**

8 **would have been concerned they might purge ones that**

9 **aren't supposed to be. The math isn't that easy to**

10 **figure out.**

11 Q Did you advise that going forward NuStar should fill

12 in section 2 completely and in terms of filling out

13 List B or List C or List A?

14 **A Yes. Um, if Lori understood it that way, I don't**

15 **know, um, but my advice is to complete every part of**

16 **the I-9.**

17 Q Did you encounter any circumstances in your audit

18 where NuStar had not received from the employee both

19 a List B and a List C document?

20 **A I don't remember.**

21 Q Um, and sitting here today, you don't remember

22 specifically what I-9s you reviewed and which ones

23 you didn't?

24 **A I don't remember.**

25 Q Um, but you at least saw a list of employees,

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1 correct?

2 **A I asked them to provide a list of employees. If my**

3 **memory serves me correct, there was a list of**

4 **employees here and then a file next to it and a file**

5 **next to it and we went down with the list of**

6 **employees in the I-9s. And I typically check them**

7 **off. I can't picture doing an I-9 audit any other**

8 **way.**

9 Q Um, and so to the best of your recollection, you

10 reviewed the ones on the list, correct?

11 **A Yes.**

12 Q Um, so if you had the list, it would help us

13 understand or help you refresh your recollection as

14 to whether you reviewed an I-9 or not, correct?

15 **A Yes, um, assuming the I-9 was there, but I don't**

16 **remember being concerned that any were missing.**

17 Q I'm going to show you two exhibits that have

18 previously been marked as Exhibits 17 and 18.

19 MR. BOYER: Here's 17. And here's 18.

20 MR. HUFF: Okay.

21 Q (By Ms. Hauser) Ms. Bahena, the court reporter has

22 just -- or we've just handed you documents

23 previously marked as Defendants' Exhibit 17 and 18.

24 And I will represent to you that we have learned

25 through discovery that this employee was employed at

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1 the time of your audit. Um, do you -- looking at

2 these two documents, do you recall whether you

3 looked at this employee's I-9 at the time of your

4 audit?

5 **A I don't remember.**

6 Q Um, what's been produced to us in litigation is a

7 photocopy of a Social Security card on -- in

8 Exhibit 18. Do you see that?

9 **A Yes.**

10 Q And on Exhibit 17 there is a notation under List C.

11 Do you see that?

12 **A Yes.**

13 Q For a Social Security card?

14 **A Yes.**

15 Q Would these two documents together be sufficient to

16 authorize this worker to be employed in the United

17 States?

18 MR. BISS: Objection, inadmissible opinion.

19 **A No. They're missing either a List B document or a**

20 **List A document.**

21 Q (By Ms. Hauser) And I note that there's no "per

22 audit" notations or post-its on this. Do you -- and

23 you don't -- I think you said you don't recall

24 whether you saw this one --

25 **A I don't remember.**

<p style="text-align: center;">105</p> <p>1 Q -- or not?</p> <p>2 Um, did you give any advice to NuStar, um, that</p> <p>3 a single Social Security card is not sufficient I-9</p> <p>4 documentation procedures?</p> <p>5 A Well, we would have gone through List A, B and C</p> <p>6 documents and, um, its filing instructions, so, um,</p> <p>7 I don't remember having an exact conversation about</p> <p>8 a single Social Security card.</p> <p>9 Q Um, if you look at Exhibit 18, do you see that the</p> <p>10 Social Security card starts with the number 9?</p> <p>11 A Yes.</p> <p>12 Q Do you know whether the Social Security</p> <p>13 Administration has ever issued valid Social Security</p> <p>14 numbers in a 900 series?</p> <p>15 A I can't speak to ever. My understanding is often</p> <p>16 those are ITIN numbers.</p> <p>17 Q Um, what would you advise an employer about this I-9</p> <p>18 and supporting document that appears to have been</p> <p>19 filled out in 2010?</p> <p>20 A I would have advised them that they need to request</p> <p>21 a List B or a List A document. I don't know if it</p> <p>22 would have occurred to me to advise about the Social</p> <p>23 Security number starting with a 9.</p> <p>24 Q What is an ITIN number?</p> <p>25 A Individual Taxpayer ID Number. They are -- I don't</p>	<p style="text-align: center;">107</p> <p>1 would typically make.</p> <p>2 Q And can you read for me what the post-it on</p> <p>3 Exhibit 127 says?</p> <p>4 A Add document information or attach -- "Add document</p> <p>5 information or attach documents used in RED."</p> <p>6 Q Do you recall what that note was intended to convey?</p> <p>7 A Here there's no documents listed in A, B or C, so we</p> <p>8 would have wanted them to make -- to correct the</p> <p>9 I-9, list valid documents in the appropriate places</p> <p>10 that they used.</p> <p>11 Q And you'll see they've made, someone at NuStar has</p> <p>12 made some corrections in red there --</p> <p>13 A Yes.</p> <p>14 Q -- on Exhibit 127.</p> <p>15 And if you flip back to Exhibit 126, do you see</p> <p>16 that there's a photocopy of a Social Security card</p> <p>17 but no additional documents?</p> <p>18 A Correct.</p> <p>19 Q And does this refresh your recollection that you</p> <p>20 encountered I-9s at NuStar where NuStar did not have</p> <p>21 all of the documents required to authorize a worker</p> <p>22 to work in the United States?</p> <p>23 A Um --</p> <p>24 MR. BISS: Objection to form.</p> <p>25 A -- it would appear, for [REDACTED] um, the</p>
<p style="text-align: center;">106</p> <p>1 know all of the laws around -- ITIN numbers, I</p> <p>2 probably shouldn't talk about them too much, but</p> <p>3 they stand for Individual Taxpayer ID Numbers.</p> <p>4 MS. HAUSER: I've asked the court reporter to</p> <p>5 mark two new exhibits. P- -- Defendants'</p> <p>6 Exhibit 126 bears the Bates numbers PX 3198, 3199</p> <p>7 and 4086. And Exhibit 127 bears the Bates numbers</p> <p>8 PX 4166 and 4167.</p> <p>9 (Exhibit 126 marked for identification.)</p> <p>10 (Exhibit 127 marked for identification.)</p> <p>11 Q (By Ms. Hauser) Ms. Bahena, would you take a look at</p> <p>12 Exhibit 126, please?</p> <p>13 A Yes.</p> <p>14 Q Do you recall whether this is an I-9 and supporting</p> <p>15 document that you reviewed as part of your audit at</p> <p>16 NuStar?</p> <p>17 A I do not remember.</p> <p>18 Q If you take a look at PX 127 -- if you refer to</p> <p>19 page 2 at PX 4167, do you see that there's --</p> <p>20 appears to be a photocopy of a post-it on the -- on</p> <p>21 the back?</p> <p>22 A Yes.</p> <p>23 Q Does that refresh your recollection as to whether</p> <p>24 this is an I-9 you reviewed as part of your audit?</p> <p>25 A Yes. I -- that would have been a notation that I</p>	<p style="text-align: center;">108</p> <p>1 documents were not listed on the I-9. I don't know</p> <p>2 the order of these exhibits, if when I reviewed it,</p> <p>3 the Social Security card was, there's a copy here,</p> <p>4 was added -- was already existing when I reviewed or</p> <p>5 if they added it later. I -- I guess I don't know</p> <p>6 which document came first.</p> <p>7 Q Um, and if this employee continued to be employed by</p> <p>8 NuStar after the audit, did they require additional</p> <p>9 identification documents to continue to employ him?</p> <p>10 A Yes.</p> <p>11 MR. BISS: Objection, inadmissible opinion.</p> <p>12 A Um, to be in compliance with the, um, regulations,</p> <p>13 they would have had to complete the I-9 with --</p> <p>14 and -- and see -- and he presented the appropriate</p> <p>15 documents to show he's authorized to work.</p> <p>16 Q (By Ms. Hauser) And do you have an understanding</p> <p>17 that if this I- -- do you recall -- sorry.</p> <p>18 You recall that earlier today you testified</p> <p>19 that some corrections may have been made to the</p> <p>20 Forms I-9 while you were present at NuStar? Did you</p> <p>21 say that?</p> <p>22 A I imagine -- I mean, if there were corrections that</p> <p>23 Lori could make, we would have shown her how to make</p> <p>24 those and helped her so that she knew how to initial</p> <p>25 and date things. There's no sense in waiting until</p>

<p style="text-align: center;">109</p> <p>1 later to make those corrections. The corrections</p> <p>2 that she could not make at the time or that needed</p> <p>3 employee corrections, we would have flagged or set</p> <p>4 aside for her to do later.</p> <p>5 Q (By Ms. Hauser) And it appears on Exhibit 127, does</p> <p>6 the post-it, presence of the post-it help you</p> <p>7 determine whether this is one you corrected on site</p> <p>8 or asked where she was directed to correct after?</p> <p>9 A Well, it's stated that the correction was</p> <p>10 November 4, 2018, um, so -- I think my audit was</p> <p>11 before that, so that would have been after.</p> <p>12 Q So even though it was audited, there's still no</p> <p>13 information suggesting that NuStar had a List B and</p> <p>14 List C document; is that correct?</p> <p>15 A Based on --</p> <p>16 MR. BISS: Objection, speculation.</p> <p>17 A Based on the exhibits in front of me, no.</p> <p>18 Q (By Ms. Hauser) And that's because both Exhibits 126</p> <p>19 and 127 are blank in the List A, B and C section of</p> <p>20 Form I-9?</p> <p>21 A Correct. And there's also no additional A, B or C</p> <p>22 documents -- well, the Social Security card would be</p> <p>23 a C, but no A or B documents attached to the exhibit</p> <p>24 that I have.</p> <p>25 Q Did you encounter in your audit any situations or</p>	<p style="text-align: center;">111</p> <p>1 audit?</p> <p>2 A It appears so because we put notations on sticky</p> <p>3 notes and there were corrections per internal audit.</p> <p>4 Q And, um, do you see on page PX 4248 there's a</p> <p>5 post-it next to the List A, B and C section that</p> <p>6 says, "Need copies of docs." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Does that refresh your recollection as to whether</p> <p>9 you encountered any situations at NuStar where there</p> <p>10 were no identification documents for the employees?</p> <p>11 A Yes.</p> <p>12 MR. BISS: Object to the form.</p> <p>13 Mischaracterizes her testimony.</p> <p>14 A Yes.</p> <p>15 So here, a couple of things on this one. Um,</p> <p>16 my comment goes to a few things. The B and -- the</p> <p>17 A, B and C should be completed. If that was</p> <p>18 possible, I don't know, because it looks like this</p> <p>19 was a terminated I-9, a terminated employee. Um,</p> <p>20 but also we would have discussed with them, "If</p> <p>21 you're going to attach copies, photocopies of</p> <p>22 documents to I-9s, it can't be same yes, same no.</p> <p>23 It should be consistent," so to have a consistent</p> <p>24 practice. So this sticky note to me is both noting,</p> <p>25 and there's a flag, too, we need A, B or C documents</p>
<p style="text-align: center;">110</p> <p>1 I-9s where NuStar had not collected or noted</p> <p>2 inspecting any identification documents for</p> <p>3 employees?</p> <p>4 A Not that I remember. If I had, I would have set</p> <p>5 them aside and noted for follow-up.</p> <p>6 MS. HAUSER: I'm going to ask the court</p> <p>7 reporter to mark as Exhibit 128 a document bearing</p> <p>8 Bates Nos. PX 4247 to PX 4248.</p> <p>9 THE COURT REPORTER: And just for the record, I</p> <p>10 need to say that while there's still talking, I</p> <p>11 can't mark exhibits. So that's why they're not</p> <p>12 getting marked quickly.</p> <p>13 MS. HAUSER: I'm good. Thanks.</p> <p>14 THE COURT REPORTER: Okay.</p> <p>15 (Exhibit 128 marked for identification.)</p> <p>16 Q (By Ms. Hauser) Ms. Bahena, we've handed you a</p> <p>17 document previously marked as Defendants'</p> <p>18 Exhibit 44 and also a new exhibit, Defendants'</p> <p>19 Exhibit 128. Do you have those in front of you?</p> <p>20 A Yes.</p> <p>21 Q And I'll refer you to Exhibit 127. Um -- or, excuse</p> <p>22 me -- yeah -- I'm not going to refer you to 127</p> <p>23 because we're done with that.</p> <p>24 Looking at Exhibit 128, are you able to tell me</p> <p>25 whether this is an I-9 you reviewed as part of your</p>	<p style="text-align: center;">112</p> <p>1 and also let's be consistent and get photocopies of</p> <p>2 documents with every I-9 for best practice.</p> <p>3 Q (By Ms. Hauser) And if this employee was employed in</p> <p>4 2017, is this an I-9 that should have still existed</p> <p>5 in full form in October of 2018 when you audited?</p> <p>6 A Depends on the start date and the termination date.</p> <p>7 So if the start date here is correct, which is</p> <p>8 July 5 of 2017, then this needs to be retained until</p> <p>9 July -- I mean, here we wrote I think August 2020,</p> <p>10 to be safe, but it should be retained three years</p> <p>11 from the start date, so yes, even though it's a</p> <p>12 terminated employee.</p> <p>13 Q Do you recall whether Mrs. Nunes or anyone at NuStar</p> <p>14 told you whether or not they had supporting</p> <p>15 documents for this employee?</p> <p>16 A I don't remember.</p> <p>17 Q Did you have any -- do you recall giving any</p> <p>18 additional advice about the situation reflected here</p> <p>19 where there is, are no identification documents</p> <p>20 referenced or copied?</p> <p>21 A I don't remember. It was a terminated employee, so,</p> <p>22 um, we would have said, you know, "Do what you can,</p> <p>23 but your options are limited at this point."</p> <p>24 Q Um, and so what are -- what is the effect of the</p> <p>25 corrections that are made on page 2 of Exhibit 128?</p>

<p style="text-align: right;">113</p> <p>1 MR. BISS: Objection, inadmissible opinion.</p> <p>2 Q (By Ms. Hauser) Do you have an understanding of what</p> <p>3 the client was correcting as of the time of the</p> <p>4 audit?</p> <p>5 A If -- well, I don't know if they had copies of</p> <p>6 documents. If they recall reviewing the documents,</p> <p>7 it would have been, um, the documents that they</p> <p>8 listed up there were examined, but there's no</p> <p>9 examination. So because the copies of the documents</p> <p>10 or -- or the documents themselves weren't listed,</p> <p>11 um, they may have, you know, filling out the first</p> <p>12 date of employment, they may have eliminated some</p> <p>13 things they could be fined on because now the first</p> <p>14 day of employment is filled out. Um, but the key to</p> <p>15 this one will be, um, the missing verification</p> <p>16 documents.</p> <p>17 Q And if no such verification documents exist or</p> <p>18 existed that were reviewed, could this employee have</p> <p>19 been legally authorized to work at NuStar?</p> <p>20 MR. BISS: Objection, speculation, inadmissible</p> <p>21 opinion.</p> <p>22 A All I can say is the I-9 was not completed, so I</p> <p>23 wouldn't be able to testify beyond that. The reason</p> <p>24 it's not completed, I don't know.</p> <p>25 Q (By Ms. Hauser) Did you advise NuStar that accepting</p>	<p style="text-align: right;">115</p> <p>1 to determine whether this is an I-9 that you</p> <p>2 reviewed as part of your audit?</p> <p>3 A It appears that it is. It has the, um, "per audit"</p> <p>4 notations and sticky note saying that it could be</p> <p>5 destroyed.</p> <p>6 Q And on the back of that document, it looks like</p> <p>7 there also may have been a little tape flag and</p> <p>8 another post-it. Do you see that?</p> <p>9 A Oh, yes.</p> <p>10 Q Um, and referring to Exhibit 129, if you look at</p> <p>11 page 3, do you see that the Tennessee driver's</p> <p>12 license says it expires on January 18th, 2016?</p> <p>13 A Yes.</p> <p>14 Q And do you see that on page 3011 the employee's</p> <p>15 first date of employment is listed as 7-7-2017?</p> <p>16 A Yes.</p> <p>17 Q Do you recall discussing with Mrs. Nunes that</p> <p>18 expired documents would not, in this particular case</p> <p>19 would not have authorized this worker to work at</p> <p>20 NuStar?</p> <p>21 A I don't remember, but we probably didn't spend much</p> <p>22 time on it because it was a terminated employee.</p> <p>23 Q But this set of documents would not have been</p> <p>24 acceptable when this employee was hired in July of</p> <p>25 2017?</p>
<p style="text-align: right;">114</p> <p>1 identification documents that were expired was not a</p> <p>2 practice that would authorize a worker to work at</p> <p>3 NuStar?</p> <p>4 A I don't recall the exact conversation, but, um, the</p> <p>5 documents, the identity documents need to be</p> <p>6 unexpired.</p> <p>7 MS. HAUSER: I'm going to hand -- ask the court</p> <p>8 reporter to mark two additional exhibits.</p> <p>9 Exhibit 129 bears the Bates numbers PX 3010 to 3012.</p> <p>10 Um, and if everyone will bear with me, there seems</p> <p>11 to be additional pages attached here that aren't</p> <p>12 related to this employee, so I'm going to -- that's</p> <p>13 the extent of Exhibit 129. And if there are</p> <p>14 additional pages, let's just rip them off and not</p> <p>15 make them part of this exhibit.</p> <p>16 Steve, do you have that?</p> <p>17 MR. BISS: I do.</p> <p>18 MS. HAUSER: Thanks.</p> <p>19 (Exhibit 129 marked for identification.)</p> <p>20 MS. HAUSER: And I'm going to ask the court</p> <p>21 reporter also to mark Exhibit 130, which is a</p> <p>22 document bearing Bates numbers PX 4172 and PX 4173.</p> <p>23 (Exhibit 130 marked for identification.)</p> <p>24 Q (By Ms. Hauser) Ms. Bahena, taking a look at</p> <p>25 Exhibit 4- -- excuse me, Exhibit 130, are you able</p>	<p style="text-align: right;">116</p> <p>1 A If --</p> <p>2 MR. BISS: Objection, inadmissible --</p> <p>3 objection, inadmissible opinion, speculation.</p> <p>4 A If these were the documents used, because the</p> <p>5 driver's license is expired, that wouldn't have been</p> <p>6 an acceptable List B document. They would have</p> <p>7 needed an unexpired, um, document.</p> <p>8 Q (By Ms. Hauser) Um, do you know at the time of your</p> <p>9 audit whether NuStar had a, previously had any</p> <p>10 policy around accepting expired identification</p> <p>11 documents?</p> <p>12 A I don't know of any policy.</p> <p>13 Q Do you recall encountering any -- any documents</p> <p>14 where -- any -- do you recall reviewing any I-9s,</p> <p>15 aside from this one, where NuStar had copies of</p> <p>16 documents that were expired at the time of hire?</p> <p>17 A I don't remember.</p> <p>18 MR. BISS: Object to the form.</p> <p>19 A I don't remember.</p> <p>20 Q (By Ms. Hauser) Do you have -- in your letter, which</p> <p>21 we previously marked as Exhibit, I can't remember</p> <p>22 which number, 124, I think --</p> <p>23 MR. HUFF: 122?</p> <p>24 MS. HAUSER: Oh, yeah, 122. 121.</p> <p>25 Q (By Ms. Hauser) Sorry. Taking a look back at</p>

<p style="text-align: center;">117</p> <p>1 Exhibit 121, in your first -- second sentence it</p> <p>2 says, "During the audit, we discussed various best</p> <p>3 practices to ensure I-9 compliance." Was not</p> <p>4 accepting expired IDs one of the best practices you</p> <p>5 discussed?</p> <p>6 A I don't remember. I would have given the spill</p> <p>7 about making sure it's a valid, unexpired List A, B,</p> <p>8 or C document. We talk about restrictions on Social</p> <p>9 Security cards because a lot of lay people don't</p> <p>10 know what that means. They're to look. So exact</p> <p>11 conversations, I don't know. If we had seen</p> <p>12 recurring items, we would have mentioned them as</p> <p>13 something to avoid going forward.</p> <p>14 Q I'm going to hand you what's previously been marked</p> <p>15 as Defendants' Exhibit 26.</p> <p>16 MR. HUFF: Thank you.</p> <p>17 MR. BOYER: Uh-huh.</p> <p>18 Q (By Ms. Hauser) Ms. Bahena, taking a look at this</p> <p>19 set of documents, do you recall whether this is an</p> <p>20 I-9 you reviewed as part of your audit?</p> <p>21 A I don't recall.</p> <p>22 Q And do you see that the, on page 1 the date that the</p> <p>23 employee, month, day, year filled out the form is</p> <p>24 5-10-2012? Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: center;">119</p> <p>1 get my objections the first time?</p> <p>2 THE COURT REPORTER: Yes, I did.</p> <p>3 MR. BISS: Okay, thank you. I won't repeat</p> <p>4 them.</p> <p>5 A Not that I recall.</p> <p>6 Q (By Ms. Hauser) Do you have any knowledge of the</p> <p>7 factors that courts or ICE consider to be evidence</p> <p>8 of a knowing hire of an unauthorized worker?</p> <p>9 A Yes.</p> <p>10 MR. BISS: Objection, relevance.</p> <p>11 Q (By Ms. Hauser) What are those factors?</p> <p>12 A Hmm, well, first is admissions from the employer or</p> <p>13 the employee would probably be the most common.</p> <p>14 Second, not completing I-9s or leaving I-9, um,</p> <p>15 documents blank.</p> <p>16 Um, knowingly accept- -- or accepting ID</p> <p>17 documents that appear on their face or that the</p> <p>18 employer would clearly know were -- were fraudulent.</p> <p>19 It becomes more of a practice question, to my</p> <p>20 understanding, um, rather than an error or oversight</p> <p>21 here and there. There needs to be a practice of it,</p> <p>22 my understanding is, unless it was a clear admission</p> <p>23 from one known employee or employer.</p> <p>24 Q And you've so advised clients generally or -- or --</p> <p>25 of these factors --</p>
<p style="text-align: center;">118</p> <p>1 Q And then on page 3, the Minnesota identification</p> <p>2 card says it expires 4-22-2012, do you see that?</p> <p>3 A Yes.</p> <p>4 Q At the time in 2012, would that have been an</p> <p>5 acceptable List B document to accept?</p> <p>6 MR. BISS: Objection, inadmissible opinion.</p> <p>7 A The expired ID card would not have been an</p> <p>8 acceptable List B document because it was expired at</p> <p>9 the time that the I-9 was completed.</p> <p>10 Q (By Ms. Hauser) Um, and have you read any decisions</p> <p>11 or opinions saying that accepting expired IDs is</p> <p>12 evidence of a knowing hire of an undocumented --</p> <p>13 MR. BISS: Objection, relevance.</p> <p>14 Q (By Ms. Hauser) -- worker?</p> <p>15 MR. BISS: Objection, relevance, inadmissible</p> <p>16 opinion.</p> <p>17 THE COURT REPORTER: His objection came right</p> <p>18 at the end of your answer -- question.</p> <p>19 MS. HAUSER: Sure.</p> <p>20 Q (By Ms. Hauser) Do you have any -- have you read any</p> <p>21 decisions or opinions stating that an employer</p> <p>22 accepting expired IDs is evidence of a knowing hire</p> <p>23 of an unauthorized worker?</p> <p>24 A Not that I --</p> <p>25 MR. BISS: Did you get my opinion -- did you</p>	<p style="text-align: center;">120</p> <p>1 A No, I --</p> <p>2 Q -- in your experience?</p> <p>3 MR. BISS: Objection, inadmissible opinion.</p> <p>4 A No, I don't get into that part of it. I advise them</p> <p>5 to, that they need to complete the I-9s with</p> <p>6 appropriate documents, that there are penalties for</p> <p>7 knowingly hiring an undocumented worker, including</p> <p>8 criminal fines, um, but to get into the legalities</p> <p>9 of the factors, I don't include that usually in my</p> <p>10 training, um, with them.</p> <p>11 Um, I educate them, as best as I know how, that</p> <p>12 it's important to have an I-9 for every employee</p> <p>13 with the correct documents, and if the documents</p> <p>14 don't look correct on their face, to do follow-up.</p> <p>15 Q (By Ms. Hauser) And we've discussed today some of</p> <p>16 those documents that don't look right on their face,</p> <p>17 correct? Like where an employee's -- where the name</p> <p>18 on an employee's Social Security card is spelled</p> <p>19 differently than the name on their photo</p> <p>20 identification card?</p> <p>21 A Correct.</p> <p>22 MR. BISS: Object to the form.</p> <p>23 A Correct. Um, I should note, if we're -- if I'm in</p> <p>24 an audit and I-9s for terminated employees are not</p> <p>25 in good shape, we use that as a learning going</p>

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1 forward. So, um, I don't spend a lot of time on
 2 those, other than if I see recurring errors, to
 3 learn what not to do in the future and what to watch
 4 out for.

5 Um, but current employees we -- we, um, look
 6 much more carefully at those I-9s because it's an
 7 ongoing issue then.

8 Q I'm going to show you what's been previously marked
 9 as Exhibit 30. And, Ms. Bahena, if you'll take a
 10 look at Exhibit 30, you'll note at the bottom of the
 11 first page it's signed by Lori Nunes on May 23rd,
 12 2011. Do you see that?

13 A Yes.

14 Q And on page 3 the resident alien card presented
 15 expired in 2009, do you see that?

16 A Yes.

17 Q Do you recall whether this was an I-9 and supporting
 18 documentation you reviewed as part of your audit?

19 A I do not recall.

20 Q And if you had, would you have advised NuStar that
 21 this expired resident alien card was not acceptable?

22 MR. BISS: Objection, speculation.

23 A If it is a terminated employee, I would have noted
 24 it and marked the date for how long you had to
 25 retain this.

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1 If it was a current employee, I would have
 2 advised them to go and ask for, um, an unexpired
 3 card to correct the I-9.

4 MS. HAUSER: I'm going to ask the court
 5 reporter to mark as Exhibits 131 and 132. Exhibit
 6 131 is going to bear the Bates numbers PX 3176 to
 7 3178 and also PX 2231. And Exhibit 132 will bear
 8 the Bates number PX 4165.

9 (Exhibit 131 marked for identification.)
 10 (Exhibit 132 marked for identification.)

11 Q (By Ms. Hauser) Ms. Bahena, did you encounter in
 12 your audit any I-9s and supporting documents where
 13 the employee entered one birth date in section 1 on
 14 Form I-9 but did not match the birth date on the
 15 employee's identification document?

16 A Um, not that I recall.

17 Q If you'll take a look at Exhibit 131, sorry,
 18 Exhibit 131, on 131 do you see that the employee
 19 entered a date of birth of [REDACTED] on part 1 of
 20 Form I-9 and on the next page you'll see that the
 21 date of birth on the permanent resident card is [REDACTED]
 22 [REDACTED] Do you see that?

23 A I do see that.

24 Q Did you give any advice to NuStar that mismatched
 25 birthdays were a sign that the employee -- or should

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1 ask more questions about the employee's documents?

2 A I would have just said, you know: Look at their
 3 documents and make sure things are consistent. Um,
 4 use common sense.

5 This looks like a terminated employee, at the
 6 time we reviewed it, so probably just set it in with
 7 the terminated employees because we can't do
 8 anything at that point. He's not working there
 9 anymore.

10 But, I mean, I would have just -- I just say,
 11 "Make sure that the documents are all on the face,"
 12 and that the employee, because there are a lot of --
 13 I do know there are a lot of literacy issues and
 14 things in -- for dairy worker crews, that they are
 15 accurately filling out section 1, based on the
 16 information on there, that it matches their ID.

17 Q Um, and here it's obvious that it doesn't.

18 A Right. The date of birth is different, um, on the
 19 I-9 and the green card.

20 Q And do you see on page 1 of the I-9 the employee
 21 checked the box called "A noncitizen national of the
 22 United States"?

23 A Yes.

24 Q Do you see that? Do you have an understanding that
 25 that notation applies to a very small number of

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1 individuals born in, say, American Samoa and others?

2 A Yes, I -- I know that. Um, a lot of lay people
 3 don't know that though.

4 Q And did you discuss with anyone at NuStar that if an
 5 employee checks "A noncitizen national of the United
 6 States," that might -- that that only accounts -- or
 7 only applies to certain identification documents?

8 A I don't recall having that conversation, but we go
 9 through the form and what the different check boxes
 10 mean, so I would imagine that I said -- and I --
 11 very few people are going to be able to check
 12 noncitizen national.

13 Q And looking at this employee's documents
 14 identification documents, does it appear that this
 15 employee satisfies the requirements to check a
 16 "Noncitizen national of the United States"?

17 A Based on the --

18 MR. BISS: Object to the form, speculation.

19 A Based on the documents that are photocopied here,
 20 no. I would expect this person would either do
 21 lawful permanent resident or at this point they may
 22 have -- may be a citizen, but, um, yeah, not -- not
 23 a noncitizen national.

24 Q (By Ms. Hauser) Um, going back to -- going to the
 25 132, do you see the two post-its on the front of the

<p style="text-align: right;">125</p> <p>1 Form I-9?</p> <p>2 A Yes.</p> <p>3 Q On the post-it with dates on it, is that your</p> <p>4 handwriting?</p> <p>5 A Yes, it looks like how I write sometimes.</p> <p>6 Q What about the post-it that says "complete"</p> <p>7 something "in"?</p> <p>8 A Oh, no, the "S" and "T," that does not look like my</p> <p>9 handwriting.</p> <p>10 The post-it that says: Complete in red --</p> <p>11 complete, I think in red -- yes, red ink. "Complete</p> <p>12 red ink," that is my handwriting.</p> <p>13 Q And what about "Shred Jan 2019"?</p> <p>14 A That would be either my associate that was there, I</p> <p>15 may have had her writing post-its for me as I</p> <p>16 dictated them, or Lori.</p> <p>17 Q And the start and -- the "S" and "T," were those</p> <p>18 start and termination dates based on the employee</p> <p>19 list that you reviewed when you were there?</p> <p>20 MR. BISS: Object to the form.</p> <p>21 A I don't recall. Um, I do ask for the list to have</p> <p>22 start and termination dates, so that's the most --</p> <p>23 so that's the clearest. That's the most likely that</p> <p>24 there was an employee list with start and</p> <p>25 termination dates, or Lori may have been looking at</p>	<p style="text-align: right;">127</p> <p>1 if -- I guess you could maybe fill it out or make an</p> <p>2 argument if they presented an unexpired green card,</p> <p>3 but you're really not supposed to -- you're not</p> <p>4 supposed to reverify for green cards, so I think</p> <p>5 that might have just been a misunderstanding and he</p> <p>6 signed a blank he didn't need to. He did not sign</p> <p>7 anything while we were there, so...</p> <p>8 Q Did you meet with Anthony Nunes the Third while you</p> <p>9 were there? That's Lori's husband? Just --</p> <p>10 A Yes. Um, he didn't sit down or look at any</p> <p>11 documents, um, because he was working. I</p> <p>12 remember -- him, he came in and said hello and,</p> <p>13 that -- you know, generally, "Thanks for coming.</p> <p>14 Um, Lori has been upset." He seemed very pleasant.</p> <p>15 Um, he was not there very long and, um, mentioned</p> <p>16 that -- yeah, I think -- I don't even remember. We</p> <p>17 mostly talked about -- we chatted briefly about him</p> <p>18 moving from California to Iowa and what that was</p> <p>19 like for him. And I don't remember anything else</p> <p>20 about the conversation. I've been trying to</p> <p>21 remember but I can't.</p> <p>22 Q Do you recall whether you gave any I-9 compliance or</p> <p>23 other legal advice to Mr. Nunes?</p> <p>24 A I don't remember if he was present when I was</p> <p>25 explaining that or if he came in after. He was not</p>
<p style="text-align: right;">126</p> <p>1 another place, but I think it was the list.</p> <p>2 Q (By Ms. Hauser) Um, do you recall whether your</p> <p>3 associate took any notes during the audit?</p> <p>4 A No, she didn't. I just had her helping with -- it</p> <p>5 was her first audit ever, so I had her helping with,</p> <p>6 like, writing the post-its that I told her to write,</p> <p>7 and, yeah, it was -- she wouldn't have known what</p> <p>8 notes to take, I don't think.</p> <p>9 Q And to the extent she left any files at the firm at</p> <p>10 the time of our subpoena, did anyone review to see</p> <p>11 if there were any notes from this file?</p> <p>12 A No. She didn't work for us as an associate that</p> <p>13 long, and everything that she left we've gone</p> <p>14 through and sorted and, um -- at least a year ago,</p> <p>15 and put in the appropriate files, or over.</p> <p>16 Q Um, going back to Exhibit, the one that I just asked</p> <p>17 you about on 132, do you see at the bottom of the</p> <p>18 page Anthony Nunes appears to have signed the</p> <p>19 reverification section?</p> <p>20 A Yes.</p> <p>21 Q And, again, what would have had to happen for</p> <p>22 someone to sign a reverification section?</p> <p>23 A I think he may have been trying to check all the</p> <p>24 boxes at that point and just oversigned the form, so</p> <p>25 I won't -- I don't -- the reverification would be</p>	<p style="text-align: right;">128</p> <p>1 there the whole time.</p> <p>2 THE VIDEOGRAPHER: Sorry to interrupt, this is</p> <p>3 the videographer. In about five minutes we have to</p> <p>4 change the tape.</p> <p>5 MS. HAUSER: We can go off the record right</p> <p>6 now.</p> <p>7 THE VIDEOGRAPHER: Okay.</p> <p>8 This ends media unit number 3 in the video</p> <p>9 recorded Zoom deposition of Amanda Bahena. And we</p> <p>10 will continue with media unit number 4.</p> <p>11 I'm sorry if I'm butchering that.</p> <p>12 We're going off the record at 2:22 Central</p> <p>13 Time.</p> <p>14 (Recess taken.)</p> <p>15 THE VIDEOGRAPHER: This begins media unit</p> <p>16 number 4 in the video recorded Zoom deposition of</p> <p>17 Amanda Bahena.</p> <p>18 We're back on the record at 2:46.</p> <p>19 MR. BISS: Kristen, just before you begin, I</p> <p>20 just want to put something on the record.</p> <p>21 During -- at some point in time before the last</p> <p>22 break Nate sent me an e-mail that, which he</p> <p>23 forwarded to me, which is an e-mail that contains a</p> <p>24 copy of an invoice. I think it's dated November 13,</p> <p>25 2018. That e-mail was sent -- it looks like it was</p>

1 forwarded by Steve Huff directly to Nate, no copies.
2 That shouldn't have been done. That e-mail
3 potentially contains privileged communications. The
4 privilege belongs to the client in this case. So I
5 just want to put that on the record that to the
6 extent that there is any privileged material in that
7 invoice, the production to Nate does not in any way
8 waive the attorney/client privilege.

9 Also, whether or not the privilege has been
10 overruled by the Court, whether or not this document
11 is part of the documents that -- that the Court has
12 already ruled on, um, regardless of that, I'm going
13 to mark the document Counsel's Eyes Only. So, um, I
14 just want to put that on the record. At some point
15 in time I'm going to put that big stamp on that
16 document.

17 Um, so with that said, I'll turn it back over
18 to you, Kristen. Thank you.

19 MS. HAUSER: Thanks, Steve. I just wrote the
20 letters "CEO" on the piece of paper that you're
21 talking about that's sitting in front of me.

22 MR. BISS: Okay. Thank you.
23 Q (By Ms. Hauser) Ms. Bahena, I'm going to hand you
24 what's previously been marked as Defendants'
25 Exhibit 36.

1 cards you've seen in your experience?
2 A It looks like an older version. Um, I'd have to
3 look at the, um, online to compare it to cards from
4 that time. And I don't -- you don't see that many
5 cards like this. Well, is there an expiration? I
6 have to look. They've gone through some different
7 versions, um, so I'd have to look online to compare
8 it to prior versions. This was from before I
9 started practicing immigration law.

10 Q And how about the Social Security card, do you see
11 that the last name is missing a letter?

12 A Yes.

13 Q Does that strike you as a valid Social Security
14 card?

15 MR. BISS: Objection, inadmissible opinion.

16 A Um, I would -- well, it wouldn't have been required
17 for the I-9, but it could raise questions. Um, in
18 any case, um, I would have had the employer ask more
19 to, I would think, and I'm no W-4 expert, but, um,
20 making sure that the -- the W-4 is correct as well.

21 Um, there are sometimes misspellings on Social
22 Security cards. If this was a current employee and
23 they'd asked me about it, I would have suggested
24 that they follow up with the employee to make sure
25 that his name and Social Security number are

1 Have you had a chance to look at Defendants'
2 Exhibit 36?

3 A Yes.

4 Q Do you recall whether you reviewed this I-9 and
5 supporting document as part of your audit?

6 A I do not remember.

7 Q If you'll take a look at page 1, the employee spells
8 his last name in section 1 as [REDACTED] and on the
9 third page the resident alien card presented also
10 spends -- spells the last name [REDACTED] And the
11 Social Security card says [REDACTED]

12 Do you see that?

13 A Yes.

14 Q Um, do you have an understanding as to whether these
15 documents would have authorized this employee to
16 work in the United States?

17 MR. BISS: Objection, inadmissible opinion.

18 A Well, the resident alien card, um, would be a List A
19 document. Um, I don't know -- this -- the I-9 is
20 not complete so I don't know when this individual,
21 the first day of work. Um, so I would -- the
22 resident alien card would be a List A document, if
23 that was what was presented.

24 Q (By Ms. Hauser) And looking at the resident alien
25 card, does this appear like valid resident alien

1 correct. If ICE would try to verify this employee,
2 it wouldn't come up as a mismatch even if he's work
3 authorized.

4 Q (By Ms. Hauser) And did -- did you, as part of your
5 audit, review I-9 and supporting documents where the
6 employee checked the U.S. citizen box in section 1
7 but did not present a valid document to establish
8 that they were a citizen of the United States?

9 A I don't remember.

10 MS. HAUSER: I'm going to ask the court
11 reporter to mark as exhibits --

12 What are the next -- where did we leave off?

13 -- as Exhibits 133 and 134. 133 is a document
14 bearing the Bates numbers PX 3128 to 3131 and also
15 2262. And the next exhibit is bearing Bates numbers
16 PX 4182 to 4183.

17 (Exhibit 133 marked for identification.)

18 (Exhibit 134 marked for identification.)

19 Q (By Ms. Hauser) Ms. Bahena, would you take a look at
20 Exhibit 134, please?

21 A Yes.

22 Q Do you recall whether you reviewed this I-9 as part
23 of your audit?

24 A It appears I did. I don't remember the time, but
25 looking at the notes, it appears I did.

<p style="text-align: center;">133</p> <p>1 Q Um, and if you look at Exhibit 133, do you see that</p> <p>2 the employee checked the box called, "A citizen of</p> <p>3 the United States"?</p> <p>4 A Yes.</p> <p>5 Q And if you look at page 3 of that document, the</p> <p>6 employee presented a document entitled "Permanent</p> <p>7 Resident Card". Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Is that document a valid document to show U.S.</p> <p>10 citizenship?</p> <p>11 MR. BISS: Objection, inadmissible opinion.</p> <p>12 A I would have to look into that. This is probably</p> <p>13 one where I would have looked at my guidance, um,</p> <p>14 this is one -- if they check "citizen," I don't come</p> <p>15 across this much, and present a permanent resident</p> <p>16 card, is that okay. Because you can't pick and</p> <p>17 choose. Um, so I apologize, I wouldn't be able to</p> <p>18 say offhand if that's sufficient.</p> <p>19 Q So you don't recall whether this is one you asked</p> <p>20 Lori or Mrs. Nunes?</p> <p>21 A I don't recall. That's a unique situation, so I</p> <p>22 don't remember what I would have advised. I would</p> <p>23 have looked at the, it's the M-274, um, to see how</p> <p>24 to handle a situation like that.</p> <p>25 Q And the M-274 is the manual that's also available</p>	<p style="text-align: center;">135</p> <p>1 should -- that they should question the employee.</p> <p>2 If the document does not look valid on its face, ask</p> <p>3 them if they have a different type of document they</p> <p>4 can present. And if that document also just raises</p> <p>5 more questions, if it's a different name or</p> <p>6 something, just, you don't proceed.</p> <p>7 Q I'm going to hand you what's previously been marked</p> <p>8 as Defendants' Exhibit 25. Do you recall whether</p> <p>9 you reviewed this I-9 and supporting document as</p> <p>10 part of your audit?</p> <p>11 A No, I don't remember.</p> <p>12 Q Um, and do you see on page 1 the employee checked</p> <p>13 off "Noncitizen National of the United States"?</p> <p>14 A I do see that.</p> <p>15 Q Um, and do the attached documents suggest that that</p> <p>16 employee checked the correct box?</p> <p>17 A I wouldn't know from the attached documents because</p> <p>18 you could come in from, say, the Marshall Islands</p> <p>19 and get a Texas ID, so I would not know. And I -- I</p> <p>20 don't know what a nonemployee (sic) national Social</p> <p>21 Security card would look like.</p> <p>22 Q And do you see any typos on the Texas ID card?</p> <p>23 A Depart- -- Department is spelled "Department" of</p> <p>24 Public "Safery".</p> <p>25 Q Is this the type of document that might, or that</p>
<p style="text-align: center;">134</p> <p>1 online on the ICE website?</p> <p>2 A Correct.</p> <p>3 Q Did you advise anyone at NuStar to take a look at</p> <p>4 the field guide M-274?</p> <p>5 A I typically say, as questions arise, "You can check</p> <p>6 the M-274 first. It may save you a phone call to</p> <p>7 me, because that is the most up-to-date</p> <p>8 instructions."</p> <p>9 Q And are there also available -- when an employer</p> <p>10 goes to the CIS website to download Forms I-9,</p> <p>11 there's also a document called: Instructions on how</p> <p>12 to fill out Form I-9; is that right?</p> <p>13 A Part of the form themselves, there are some, like,</p> <p>14 limited instructions on the form itself, so part of</p> <p>15 the I-9, which is actually -- I mean, depending on</p> <p>16 the version. But like a nine-page form is</p> <p>17 instructions. Um, I don't -- I'll have to look. I</p> <p>18 think the new one they don't do that anymore, but...</p> <p>19 Q Um, other than documents we've already looked at</p> <p>20 today, did you give advice to NuStar that if they</p> <p>21 noticed any obvious typos on identification</p> <p>22 documents that that should cause them to question</p> <p>23 the employee about, further about their documents?</p> <p>24 A Yes. Like if on the face something doesn't look</p> <p>25 right, typos, um, not like a doc- -- yeah, that they</p>	<p style="text-align: center;">136</p> <p>1 should cause an employer to question the employee a</p> <p>2 little more --</p> <p>3 A Yeah.</p> <p>4 Q -- about their documents?</p> <p>5 A Yes.</p> <p>6 MR. BISS: Objection, speculation, inadmissible</p> <p>7 opinion.</p> <p>8 A This would be an example of a document that we would</p> <p>9 say, "If you notice the typos, you should follow up</p> <p>10 on that."</p> <p>11 Q (By Ms. Hauser) Um, and just to close the loop, none</p> <p>12 of the section 2 is filled out for this employee on</p> <p>13 Form I-9?</p> <p>14 A Right.</p> <p>15 Q And, again, that would be something that the</p> <p>16 employer should fill out?</p> <p>17 A Yes.</p> <p>18 Q I'm going to hand you what's previously been marked</p> <p>19 as Exhibit 15.</p> <p>20 Have you had a chance to take a look at this</p> <p>21 document, Ms. Bahena?</p> <p>22 A Yes.</p> <p>23 Q And do you recall reviewing this I-9 with NuStar?</p> <p>24 A I do not remember.</p> <p>25 Q And if this employee was a current employee at the</p>

<p style="text-align: right;">137</p> <p>1 time, do you see anything on the form that would</p> <p>2 cause you to have given additional advice?</p> <p>3 MR. BISS: Objection, inadmissible opinion.</p> <p>4 A Well, the List B and C are blank, so I would have</p> <p>5 advised them to fill that in by the person who</p> <p>6 inspected the document, if possible.</p> <p>7 Um, and then they have -- a non-citizen</p> <p>8 national of the U.S. is checked, um, on the front</p> <p>9 page, but looking at the documents provided, I don't</p> <p>10 know if I would have advised them to, um, to push</p> <p>11 the employee if he's truly a non-citizen national,</p> <p>12 because a non-citizen national could have, under --</p> <p>13 based on my understanding, gotten these documents.</p> <p>14 So if I'm incorrect, I -- if the Social Security</p> <p>15 card would be different.</p> <p>16 Q What about the 900 series on the Social Security</p> <p>17 card?</p> <p>18 A I -- I may have missed that, the 900 series, if it's</p> <p>19 only ITINs can be 900s. So I don't know if I -- I</p> <p>20 don't know if I would have told them that they</p> <p>21 should follow up on this one.</p> <p>22 Q You've said a few times today: I might have missed</p> <p>23 that. Are you confident in your audit at NuStar?</p> <p>24 A Well, we do the best that we can. Um, there's a lot</p> <p>25 of forms and a lot of documents. I don't know if I</p>	<p style="text-align: right;">139</p> <p>1 Q (By Ms. Hauser) So in your review, did you talk with</p> <p>2 Mrs. Nunes or anyone at NuStar more in depth about</p> <p>3 any particular employee other than what was on the</p> <p>4 face of the documents you looked at?</p> <p>5 A We didn't talk in depth on particular employees, no.</p> <p>6 Q So it was not communicated to you during the audit</p> <p>7 that this employee had lived on their -- in their --</p> <p>8 in Nunes' family-owned property for several years?</p> <p>9 A No.</p> <p>10 Q And I'm going to hand you what's been previously</p> <p>11 marked as Exhibit 20. Do you recall reviewing this</p> <p>12 I-9 and supporting document while you were at</p> <p>13 NuStar?</p> <p>14 A I don't remember.</p> <p>15 Q Um, and did you -- um, do you see -- I'll represent</p> <p>16 to you this employee was a current employee at the</p> <p>17 time of the audit and thereafter. Um, do you see on</p> <p>18 page 1 of the I-9 the address is filled in with an</p> <p>19 initial from Lori in part 1?</p> <p>20 A Yes.</p> <p>21 Q Um, did you expect that -- did you give advice to</p> <p>22 NuStar that they should fill in section 1 if the</p> <p>23 employee was still there?</p> <p>24 A No, I said the employee should, um, they should go</p> <p>25 and ask the employee to finish section 1 if there</p>
<p style="text-align: right;">138</p> <p>1 reviewed this one specifically.</p> <p>2 So I'm confident that we went there; we gave</p> <p>3 them correct instructions on how to fill out I-9s.</p> <p>4 And we marked the I-9s that needed follow-up. Did I</p> <p>5 catch every misspelling, like the [REDACTED] I</p> <p>6 may have missed that. We went through a lot of</p> <p>7 documents. So, um, is every I-9 I do, review I do</p> <p>8 perfect? I wish, but there may be things that I</p> <p>9 miss. Um, especially with terminated employees, we</p> <p>10 don't get as far into those unless we're seeing</p> <p>11 recurring errors because there's not much you can</p> <p>12 do.</p> <p>13 Um, so if this was a -- if this was a current</p> <p>14 employee, um, I -- I think a lot of people wouldn't</p> <p>15 know to -- I don't know, looking at this, if they</p> <p>16 should be pushed on the noncitizen national issue.</p> <p>17 The num- -- the Social Security number starting</p> <p>18 with a nine, I would have to look into if that's a</p> <p>19 reason to go back and push on an employee.</p> <p>20 Q What about if the employee had lived in housing</p> <p>21 provided by NuStar in Iowa for the last several</p> <p>22 years but had a California driver's license?</p> <p>23 MR. BISS: Objection, speculation.</p> <p>24 A That wouldn't come up in my review of the document</p> <p>25 on its face.</p>	<p style="text-align: right;">140</p> <p>1 were open items. Unless the employee wasn't there,</p> <p>2 and then -- and then there's really no other option.</p> <p>3 Q And do you see that the employee checked the box</p> <p>4 called "A noncitizen national of the United States"?</p> <p>5 A Yes.</p> <p>6 Q And do you see on the second page that the employee,</p> <p>7 at least the copy here, is that of a permanent</p> <p>8 resident card?</p> <p>9 A Uh-huh.</p> <p>10 Q Um, do those -- are those -- are that check box and</p> <p>11 this card consistent?</p> <p>12 A No. That would have caused me to, um, suggest that</p> <p>13 they go talk to the employee to see if they filled</p> <p>14 out section 1 correctly.</p> <p>15 Q And did you talk to them -- did you give that advice</p> <p>16 with respect to this then current employee?</p> <p>17 A I can't say with a hundred percent certainty, but I</p> <p>18 would assume that I said to check why did they check</p> <p>19 noncitizen national if they presented a permanent</p> <p>20 resident card. Sometimes it's just a mistake by the</p> <p>21 employee.</p> <p>22 Q And do you see on the permanent resident card that</p> <p>23 it has the notation "INS"?</p> <p>24 A Oh, I see that now, yes.</p> <p>25 Q Is that a notation that appeared on permanent</p>

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1 resident cards at that time?

2 **A No, I do not believe so.**

3 Q That should at least say ICE or CIS? Or what should

4 it say?

5 **A CIS, I believe, or just an "A" number, I think. I**

6 **would have to look at an example.**

7 Q Do you recall discussing this discrepancy with

8 anyone at NuStar at the time?

9 **A No.**

10 MR. BISS: Objection to form.

11 **A No, I don't recall that.**

12 Q (By Ms. Hauser) And do you see the, on the back of

13 the card, on the last page of the exhibit --

14 **A Yes.**

15 Q -- do you see there's a reference to the U.S.

16 Department of Justice?

17 **A Yes.**

18 Q Is that something that appeared on permanent

19 resident cards?

20 **A I don't know. I'd have to look at a card. I**

21 **believe it would be U.S. Citizenship and Immigration**

22 **Services.**

23 Q I'm going to hand you what's been previously marked

24 as Exhibit 21. Um, Ms. Bahena, do you recall

25 reviewing this I-9 and supporting document as part

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1 of your audit?

2 **A I do not recall.**

3 Q And I'll represent to you that this was a then

4 current employee at NuStar at the time.

5 **A Uh-huh.**

6 Q Um, if you'd look at the Social Security card on the

7 third page, does that Social Security card in your

8 experience look valid on its face?

9 MR. BISS: Objection, inadmissible opinion.

10 **A I -- I would say yes. Nothing jumps out at me.**

11 Q (By Ms. Hauser) And the font being off center, that

12 doesn't strike you as odd?

13 **A I guess I don't --**

14 MR. BISS: Asked and answered.

15 **A I don't see the --**

16 MR. HUFF: The "USA".

17 Q (By Ms. Hauser) The "USA" right in the middle.

18 MR. BISS: Asked and answered.

19 **A It -- it didn't jump out at me. And I --**

20 Q (By Ms. Hauser) And how about on the permanent

21 resident card, do you see that it says again "INS"?

22 **A Yes.**

23 Q Um, did you discuss that with anyone at NuStar

24 regarding this employee's ID?

25 **A No.**

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1 MR. BISS: Asked and answered.

2 **A I don't believe I would have.**

3 Q (By Ms. Hauser) And why is that?

4 **A It probably didn't jump out at me that it said "INS"**

5 **rather than just a number.**

6 Q And you don't recall any advice you gave with

7 respect to this employee?

8 **A I don't recall.**

9 Q Ms. Bahena, have you had a chance to take a look at

10 Exhibit 109?

11 **A Yes.**

12 Q On the second page, by section 2 there's a note

13 "Internal Audit, 10/18". Do you see that?

14 **A Yes.**

15 Q Um, is this one of the I-9 forms that you corrected

16 with Mrs. Nunes?

17 **A I think we -- in those I think there's a couple that**

18 **we added the employee's first -- the employee's**

19 **first date of employment. Yes, that seems**

20 **consistent with what I remember.**

21 Q And it appears the signature was filled in later by

22 Mr. Nunes?

23 **A It appears so, yes.**

24 Q And do you recall any specific discussion about this

25 Form I-9?

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1 **A I do not recall.**

2 Q Um, do you recall knowing that section 2 was blank?

3 **A I would have noted that, yes. That would have been**

4 **an ongoing note of section 2 needs to be filled in,**

5 **on one said section two is not filled in.**

6 Q And I think you said earlier, for the ones -- for a

7 current employee, did you advise NuStar to fill in

8 section 2?

9 **A Yes. My expectation was they were going to go and**

10 **complete section 2 but ideally by the person who**

11 **looked at the documents. So, I don't know, I can't**

12 **speak to them, but it may not have been communicated**

13 **to Mr. Nunes to fill out section 2 himself.**

14 Q And in your letter, in Exhibit 121 --

15 **A Yes.**

16 Q -- there's a reference to, um, educating or training

17 the employee who's going to fill out the forms on

18 how to properly inspect documents.

19 Do you see that?

20 **A Yes.**

21 Q What was your advice in that regard?

22 **A Could you rephrase the question?**

23 Q Sure. Um, was filling out section 2 part of the

24 advice that is part of that section of the letter?

25 I'm going to take -- I withdraw it. I'll ask a

better question.

At the bottom of your letter it says: As we discussed, the employer portion of the form should be filled out by the staff member who actually inspects the employees' identification documents.

A Yes.

Q Did you communicate that in person to Mrs. Nunes?

A I did to Mrs. Nunes. Um, I think that -- I recall that being a large part of the conversation, um, was one person was taking copies and the other person was filling out the I-9, whether they had a misunderstanding of the rules or what. Um, and so my understanding was whoever looked at these, um, or whoever signed the bottom saying they looked at those was going to be the person who finished section 2, but I never followed up to see if that had happened.

Q Um, and where it says, "If that," in your letter, "If that individual is not yourself, it is important that you adequately train the inspecting staff person." Was it your expectation that Mrs. Nunes was going to educate Mr. Nunes on that?

A I don't remember exactly. I just remember there were more people involved than I felt needed to be and it would be cleaner and they'd have more

A Completing, um, the I-9s, if -- if you don't have the documents that look valid to fill it out, then having the hard conversation and asking for those documents, and if they can't produce them, then, um, you have to terminate the employee. But other than that, no. It's a requirement that the I-9 be filled out completely.

Q Did you advise them that any employee ought to be terminated based on your audit?

A No. If there was concerns on any I-9, I would have set them aside and told them to follow up with the employee if there were questions. But would I terminate a employee simply based on an I-9? No.

Q How many did you set aside for them to follow up with the employee?

A I do not recall.

Q There were some?

A Yes, there would have been some.

Q Current employees?

A Yes, some.

Q And that's not in your letter?

A No, that's not in my letter.

Q Why not?

A It's -- we would have flagged them as blanks in the form and said, "Only employees can fill out the

accuracy if one person was involved. And that was more in line with the regulations as well.

(Discussion off the record between Ms. Hauser and Mr. Boyer.)

Q (By Ms. Hauser) Um, looking at your letter, um, it says in the beginning at the end of the third line, "During our audit, we did find some blanks in certain forms."

Um, were there any forms where section 2 was filled out properly?

MR. BISS: Object to the form.

A I believe so. Otherwise -- yeah, I don't remember, but I would have -- yeah, I believe there was, but I don't remember, and I couldn't say which ones. It seems different people, they had used different practices over time. For a while Lori did them, and then they kind of switched the practice, um, so it kind of depended on their practice, I think, in any given year how -- how they were filled out.

Q Did it -- did you express any -- aside from what's in your letter, what did you communicate to NuStar about any concerns you had about the blanks? Is there more that you discussed with them than what's in your letter or what we already talked about today concerning blanks that you found?

first page. You have to do the second page." But that's part of completing the I-9.

Q You say at the end of the first paragraph, "The solution to this is for the employer to carefully review the employee and employer portion of the form to ensure that every required question is answered."

Do you see that?

A Yes.

Q Did you give any other advice about that other than what we've already talked about today?

A Other than what we've talked about today, I don't believe so.

Q The second paragraph of your letter you discussed storage. Did you express any concerns to NuStar about how the I-9 forms were being stored at the time?

A I think they had questions about how to store I-9 forms and what the rules were, um, so that was just a follow-up. But I didn't think that electronic storage for them would be the best just because there's a lot of regulations and they're, yeah, they're not Human Resources trained, so --

THE COURT REPORTER: I'm sorry? They're not?

THE DEPONENT: Like trained in Human Resources specifically.

1 A So I had worries that maybe the electronic storage
2 would not be the best.

3 Q (By Ms. Hauser) Um, and that's because there are
4 certain security requirements around electronic
5 storage, et cetera?

6 A Right. That's actually why I don't copy the I-9s
7 that I review because I don't want to run afoul of
8 electronic storage of I-9s.

9 Q Um, in the third paragraph, we already talked about
10 the different color pen. And then the next sentence
11 says, "It will show the government that you are
12 putting forth the best efforts to comply with I-9
13 requirements." What did you discuss with NuStar
14 about that?

15 A Oh, I mean, as we reviewed these documents, we don't
16 want to try to fix errors without showing what
17 you're doing, because that could be fraud and it
18 will just raise more questions if there's an audit.
19 It's very -- I've seen people who have tried to do
20 their own internal audits, and, um, not clearly mark
21 which questions or what things they added and then
22 it calls all of the I-9s into question from the
23 beginning. Um, so, I mean, both to avoid looking
24 like you're committing fraud or something and to
25 show these were the only issues we needed to correct

1 person who viewed them the first time, if possible,
2 was the person, if the attestation wasn't complete,
3 that completed the attestation to be consistent.

4 I wanted the person who, if the line 2 was
5 blank and completed the attestation -- like if
6 Anthony had completed the attestation but not
7 completed part 2, I wanted Anthony to complete
8 part 2.

9 I wanted to avoid wide -- I counseled them not
10 to do a widespread reverification, um, of every
11 employee, even though they were nervous, because
12 that also is, you can run into discrimination, but
13 if there were employee documents that looked
14 invalid, to follow up on those. I didn't, in so
15 many -- yeah, I don't know exactly how I put that,
16 but that was my message at the time and -- and --
17 and my philosophy.

18 Q (By Ms. Hauser) And on the ones you counseled them
19 to follow up on, did you counsel them to ask for
20 originals again or to review the photocopies?

21 A If I -- if I saw an issue with a photocopy, it would
22 have been: This document doesn't look correct. You
23 should ask for an alternate document.

24 Q And you did do that on this audit?

25 A I don't remember specific employees or which

1 on this I-9, not the whole I-9, I make sure that
2 they're indicating what corrections they're making.

3 Q And so you had communicated to someone at NuStar
4 that as the documents existed at the time of your
5 review, they were not in compliance with I-9
6 requirements?

7 MR. BISS: Object to the form.

8 A It's a bit of a loaded question, because it's rare
9 to go to any I-9 review, and I don't know if anyone
10 has, and find perfect I-9s. It's just the nature of
11 I-9s. Um, so were there things they needed to
12 correct, were there I-9s that were not in
13 compliance? Yes. Were there I-9s that, um, were
14 too late to correct? Yes. Um, were there I-9s that
15 had technical errors that could be corrected? Yes.
16 So I advised them to make the corrections they were
17 able to make.

18 Q (By Ms. Hauser) At the time that NuStar was going to
19 fill in the certification section on section 2 after
20 the fact, after the audit --

21 A Yes.

22 Q -- did you advise NuStar that they should be taking
23 another look at the photocopies of the
24 identification documents?

25 A To some extent. Um, I wanted to make sure the

1 documents, but if I saw a document that looked
2 obviously false, I would have said: Follow up and
3 ask if they have another document or like an
4 expired (sic) one for a current employee, or do --
5 yeah, look into it.

6 Q So, for example, when we looked at Defendants'
7 Exhibit 17 and 18, um, there's only a Social
8 Security card and no identification document. Did
9 you advise NuStar to ask that employee for
10 additional documentation?

11 A I -- if I saw this, my practice would be to advise
12 them to ask for a List A or List B document. I
13 don't recall the exact conversation or the exact
14 reviewing this I-9.

15 THE COURT REPORTER: I'm sorry, reviewing?

16 THE DEPONENT: This exact I-9.

17 Q (By Ms. Hauser) What did you mean in the last
18 paragraph, or the last full paragraph of your
19 letter, um, to inspect the employee documents?
20 What's -- what's part of an inspection? Sorry,
21 previous paragraph.

22 A Okay. Well, an I-9 -- inspecting the employee
23 documents would be the person -- you're supposed to
24 handle the original document. So the person who's
25 handling the original document is supposed to be the

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1 person that does the attestation.

2 Q And they're attesting that they've checked the

3 document to make sure it appears valid on its face?

4 A Yes.

5 Q And that it relates to the person who filled out the

6 Form I-9 with their name?

7 A Yes.

8 Q And it says, "If that individual is not yourself, it

9 is important that you adequately train the

10 inspecting staff person." What -- other than what

11 we've already talked about today, was there anything

12 else you discussed with NuStar about that training?

13 A I remember Lori was mentioning that she felt she had

14 a lot on her plate and that she was actively

15 involved -- I mean, if I remember right, they have

16 kids, and she was helping with calves and -- and

17 talking about chores, and then the I-9s she felt I

18 think -- I don't want -- like there was a lot for

19 her to do. Um, so we mentioned, "You could, you

20 know, hire someone. But if you hire someone, then

21 you need to make sure they're trained," so ...

22 "Like an employee could do this. It doesn't need to

23 be an owner or manager."

24 Q Do you recall any specific indicia of invalidity

25 that you, regarding documents that you spoke to the,

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1 NuStar about?

2 A I don't remember.

3 Q Did you have such a conversation?

4 A I remember saying, "You need to make sure documents

5 look valid on their face. Um, there's ways that you

6 can get trained up in that." But, I mean, we didn't

7 have this lecture on seeing valid versus invalid

8 documents, no, we didn't get into the in-depth

9 training on that.

10 Q Did anyone at NuStar ask you: What can -- what

11 should I look for?

12 A I don't remember.

13 Q You don't remember one way or another or you didn't?

14 A I don't remember. I don't remember. If they had

15 asked, I would have probably pointed them to online

16 resources where you can compare what a document

17 looked like at that date and time.

18 Q I'm going to hand you --

19 MS. HAUSER: -- hand the court reporter a new

20 document to mark as Exhibit --

21 THE COURT REPORTER: 135.

22 MS. HAUSER: -- 135. This is a copy of

23 invoices dated November 13th of 2018 that were

24 produced during the deposition.

25 MR. BISS: Kristen, you said earlier that you

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1 had marked the document CEO?

2 MS. HAUSER: Yes.

3 MR. BISS: I take it that's Counsel's Eyes

4 Only?

5 MS. HAUSER: Correct.

6 MR. BISS: Okay. Thanks.

7 (Exhibit 135 marked for identification.)

8 Q (By Ms. Hauser) And, Ms. Bahena, the court reporter

9 has just handed you Exhibit 135.

10 MS. HAUSER: And I just want to state for the

11 record: The handwritten letters "CEO" on the bottom

12 right corner are my handwriting and not part of the

13 original document.

14 Q (By Ms. Hauser) Ms. Bahena, what is the document

15 135?

16 A This is a regenerated invoice from our billing

17 system for, um, the services to NuStar from 2018.

18 Q And does this document refresh your recollection as

19 to when you visited the farm?

20 A Yes.

21 Q And when was that?

22 A It was October 8th, 2018.

23 Q Um, and does this invoice capture the sum and

24 substance of all the work that you did on NuStar's

25 I-9 audit?

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1 A Yes.

2 Q What did you discuss with NuStar in terms of options

3 for sponsoring future employees?

4 A I don't recall the exact conversation, but it would

5 have been similar to the H-2As, the TNs and the

6 green cards. I get those questions a lot.

7 Q That we discussed earlier today?

8 A Yes.

9 Q And there's a reference to additional I-9 training.

10 Um, did that comprise anything other than what we've

11 already talked about today?

12 A No, I don't believe so.

13 Q Um, did Mrs. Nunes ask about options for sponsoring

14 future employees?

15 A I don't remember if she asked or if I offered some

16 ideas to fill some gaps.

17 Q Did they express to you they had employee, excuse

18 me, staffing needs?

19 A I don't remember.

20 Q What gaps were you trying to fill?

21 A Well, she felt that --

22 MR. BISS: Object to the form.

23 A She -- like the TNs, the ones I would have

24 suggested, for example, would have been a higher

25 level employee, and I remember she was talking about

1 how it's very busy and a lot of work, um, so I
 2 mentioned other dairies can get an animal scientist
 3 and breeders under these programs, and, um -- yeah,
 4 I probably -- yeah, and if -- petitioning long term
 5 for milkers, but I don't remember the exact
 6 conversation. Those would be long-term planning.
 7 Q (By Ms. Hauser) Um, did you advise NuStar that,
 8 quote, everything was fine with their I-9 documents?
 9 A I wouldn't have used those exact words.
 10 Q Did you give them, in sum and substance, that
 11 advice?
 12 A I do remember saying that I could -- I could -- to
 13 this effect: I could tell that she was trying to
 14 comply. She seemed very anxious about whether or
 15 not she had done things correctly, and I assured her
 16 that it seemed like she was trying to comply.
 17 Q Did you -- asked by -- were you asked by NuStar to
 18 judge the validity of any underlying supporting
 19 documents?
 20 A Aside from the I-9s?
 21 Q Correct.
 22 A No.
 23 Q So part of your audit wasn't to tell NuStar who
 24 among the employees had provided valid versus
 25 invalid documents?

1 A No.
 2 Q Did NuStar ask you to advise them who among their
 3 employees were legal to work in the U.S.?
 4 A No.
 5 Q Did they ask you to let them know who you might have
 6 suspected was not legal to work in the U.S.?
 7 A I don't remember that exact question.
 8 Q Was there a question like it?
 9 A Or like -- I don't remember them asking like looking
 10 through these I-9s, is there, you know, other than
 11 the I-9 review, beyond the I-9 review. I guess we
 12 looked through the I-9s and she wanted to make sure
 13 she was doing the paperwork correctly.
 14 Q In your experience doing I-9 audits for clients
 15 generally, um, do you provide services beyond just
 16 seeing if the paperwork is done correctly?
 17 MR. BISS: Objection, inadmissible opinion.
 18 A No. Do I go out and interview employees or
 19 anything? No, I do not do that.
 20 Q (By Ms. Hauser) But if identification copies are
 21 made available to you during an audit, you certainly
 22 will take a look at them?
 23 A Yes. If someone brought me an ID and asked me, an
 24 original ID and asked me to look it over, I would be
 25 open to doing that.

1 Q And that didn't happen at NuStar?
 2 A No, I didn't see any original IDs.
 3 Q Did you advise anyone at NuStar that certain
 4 employees may have provided fake documents?
 5 A I wouldn't be able to say with certainty at NuStar
 6 at that audit if I had or not. I -- I don't
 7 remember. I would have taken an I-9 at a time.
 8 Q And you have no recollection if at any time you said
 9 to anyone that an employee may have provided a fake
 10 document?
 11 A I don't recall. But if I had seen one that jumped
 12 out at me, I would say, you know: Follow up on
 13 this, if they were still a current employee, or:
 14 Set it aside.
 15 Q Did you advise anyone at NuStar that employees may
 16 be engaging in identity theft?
 17 A No. Like using someone else's name and ID? No, I
 18 didn't advise that.
 19 Q Did you advise them on the risks that some workers
 20 may be using false Social Security numbers or...?
 21 A Yes.
 22 Q Do you know how many?
 23 A No.
 24 Q Did you advise them that certain workers may not be
 25 properly authorized to work in the U.S.?

1 A Yes. I explained that documents can look fine on
 2 their face but that doesn't guarantee that it's --
 3 it's an authorized worker.
 4 Q And did you reference any specific employees in that
 5 conversation?
 6 A No.
 7 Q Did your I-9 audits speak to the issue of whether
 8 NuStar had a legal workforce?
 9 A No.
 10 Q And NuStar didn't ask you about that?
 11 A No. I mean, I wouldn't be able to opine that based
 12 on the I-9 audit. I would have had to do further
 13 investigation.
 14 Q And you weren't asked to do any further
 15 investigation?
 16 A No.
 17 Q And you didn't offer to do any?
 18 A I would have referred something like that out most
 19 likely.
 20 Q Is it possible that some of the workers whose I-9s
 21 you reviewed are, in fact, not properly authorized
 22 to work in the U.S.?
 23 A Yes.
 24 MR. BISS: Objection, speculation, inadmissible
 25 opinion.

<p style="text-align: right;">161</p> <p>1 Q (By Ms. Hauser) Do you agree that having a complete</p> <p>2 I-9 on file for a worker is no guarantee that the</p> <p>3 person is legal to work in the U.S.?</p> <p>4 A Yes.</p> <p>5 MR. BISS: Objection, inadmissible opinion.</p> <p>6 Q (By Ms. Hauser) Did you give any advice to NuStar on</p> <p>7 the government's offer of a program called E-Verify?</p> <p>8 A Yes.</p> <p>9 Q What did you discuss in that regard?</p> <p>10 A I tell them that there is an optional program</p> <p>11 available, E-Verify, ran through a little bit how</p> <p>12 that works, um, and that it can reduce the risk of</p> <p>13 having employees, for example, that their documents</p> <p>14 look fine but they're fraudulent. Um, I don't know</p> <p>15 if we went farther than -- I mean, I don't recall</p> <p>16 the exact conversation, but I do bring up E-Verify</p> <p>17 in I-9 audits.</p> <p>18 Q Um, did you give any specific advice to NuStar as to</p> <p>19 whether they should or should not use it or consider</p> <p>20 using it?</p> <p>21 A Kind of --</p> <p>22 MR. BISS: Asked and answered.</p> <p>23 A I mean, I don't remember the exact conversation, but</p> <p>24 I just give them the pros and cons and leave that up</p> <p>25 to the individual employer. Um, yeah, I just --</p>	<p style="text-align: right;">163</p> <p>1 Q If ICE was going to conduct a review of a business'</p> <p>2 I-9s, they would review the photocopies of the IDs</p> <p>3 if an employer had those on file?</p> <p>4 A Yes, if they were --</p> <p>5 MR. BISS: Object to the form, speculation,</p> <p>6 inadmissible opinion.</p> <p>7 Q (By Ms. Hauser) Based on your experience?</p> <p>8 A Based on my experience, if they're attached to the</p> <p>9 I-9, they will review them as part of the I-9.</p> <p>10 Q Based on your experience, would ICE check the</p> <p>11 employee's proffered names, birthdays and Social</p> <p>12 Security numbers against databases to determine if</p> <p>13 they match the government's records?</p> <p>14 A Based on my experience, yes.</p> <p>15 MR. BISS: Objection, inadmissible opinion.</p> <p>16 Q (By Ms. Hauser) And if they didn't match, would they</p> <p>17 notify the business?</p> <p>18 A Based on --</p> <p>19 MR. BISS: Objection, speculation, inadmissible</p> <p>20 opinion.</p> <p>21 A Based on my experience, they will provide a list of</p> <p>22 the names of employees who do not match.</p> <p>23 Q (By Ms. Hauser) And if an employee -- employer</p> <p>24 received a no-match letter from the government, can</p> <p>25 an employer also access who, in its employee, among</p>
<p style="text-align: right;">162</p> <p>1 yeah, I let them weigh it. And I don't tell them to</p> <p>2 do it or not to do it.</p> <p>3 Q Did Mrs. Nunes say anything in response to that</p> <p>4 advice?</p> <p>5 A I don't remember.</p> <p>6 Q In giving advice on the risks that some workers may</p> <p>7 be using false Social Security numbers, did</p> <p>8 Mrs. Nunes say anything in response to that advice?</p> <p>9 A I don't remember.</p> <p>10 MR. BISS: Object to the form of the question.</p> <p>11 Q (By Ms. Hauser) What are the pros and cons of</p> <p>12 E-Verify?</p> <p>13 A Well, the pro is it's -- it allows you to check to</p> <p>14 make sure the employee's, um, name matches their</p> <p>15 Social Security number in the Social Security</p> <p>16 database, so it can reduce the risk that you are</p> <p>17 unknowingly employing undocumented workers going</p> <p>18 forward.</p> <p>19 Um, the cons, it's more paperwork that needs to</p> <p>20 be done. And you can't go back and verify existing</p> <p>21 employees, so it's looking forward only.</p> <p>22 Um, you need -- once you decide to do it, you</p> <p>23 need to -- it's -- essentially you need to do it</p> <p>24 forever going forward. So it's a commitment to do</p> <p>25 that.</p>	<p style="text-align: right;">164</p> <p>1 its employees, came back as the no match?</p> <p>2 A From ICE?</p> <p>3 MR. BISS: Objection to form, speculation,</p> <p>4 inadmissible opinion.</p> <p>5 A A no-match letter from ICE like in the context of</p> <p>6 a --</p> <p>7 Q (By Ms. Hauser) Sorry. Do you have an understanding</p> <p>8 that at some point the government revived a practice</p> <p>9 of sending to employers a notice that employees for</p> <p>10 whom they had submitted wage information did not</p> <p>11 match the Social Security Administration's records?</p> <p>12 A Yes.</p> <p>13 Q If an employer receives such a letter, do you have</p> <p>14 an understanding that the employer can follow up</p> <p>15 online to find out which of its employees produced</p> <p>16 the no-match results?</p> <p>17 MR. BISS: Objection, inadmissible opinion.</p> <p>18 A There's instructions, um, to employers, through the</p> <p>19 Social Security Administration, on how to handle</p> <p>20 those no-match letters. When I get questions for</p> <p>21 them, I direct them to that. And there's a form</p> <p>22 letter that you're supposed to give to every</p> <p>23 employee that you get a no-match letter for to let</p> <p>24 them know that you got a no-match letter.</p> <p>25 Um, and then I -- it depends on the employer</p>

<p style="text-align: center;">165</p> <p>1 situation and the no-match letter, so I wouldn't be</p> <p>2 able to -- I don't feel comfortable just giving</p> <p>3 general advice on how to handle no-match letters</p> <p>4 because it depends on the employer.</p> <p>5 Q (By Ms. Hauser) Is one other con of E-Verify that it</p> <p>6 may prevent you from being able to hire someone?</p> <p>7 MR. BISS: Object to the form, inadmissible</p> <p>8 opinion.</p> <p>9 Q (By Ms. Hauser) Based on your experience?</p> <p>10 A If someone comes up as a tentative non-confirmation</p> <p>11 in E-Verify, then before you hire them you need to</p> <p>12 have them go -- like, you let them know -- there's</p> <p>13 these specific notices that you get. Um, and if the</p> <p>14 situation isn't resolved in the statutory period of</p> <p>15 time under the regulations, then you should not --</p> <p>16 then you cannot hire that worker, yes.</p> <p>17 Q Did Mrs. Nunes ask you about visa sponsorship for</p> <p>18 any specific current employees?</p> <p>19 A No.</p> <p>20 Q Did she ask if it was possible for NuStar to get</p> <p>21 legal status for any existing employees?</p> <p>22 A I don't remember.</p> <p>23 Q And of the pros and cons of E-Verify that you</p> <p>24 testified about in the last few minutes, did you</p> <p>25 tell those to Mrs. Nunes?</p>	<p style="text-align: center;">167</p> <p>1 or corrected documents so that it does match Social</p> <p>2 Security database, then you have a certain amount of</p> <p>3 time to terminate that employee. And in my</p> <p>4 experience usually that time is, they give you a</p> <p>5 time, and then you negotiate, um, with the</p> <p>6 government if you can keep employees who are willing</p> <p>7 to stay on a little longer, just for the business,</p> <p>8 you know, depending on the extent of the situation.</p> <p>9 Q (By Ms. Hauser) And did Mrs. Nunes ask you, in sum</p> <p>10 or substance, if -- if NuStar would lose employees</p> <p>11 if ICE did an audit?</p> <p>12 A I don't know if she asked me specifically, but I</p> <p>13 would have warned her of the risk.</p> <p>14 Q What other risks of an ICE audit did you inform her</p> <p>15 of?</p> <p>16 A Civil and -- civil monetary penalties, um, and if</p> <p>17 ICE had any reason to believe that anyone was</p> <p>18 knowingly employing an unauthorized worker, there</p> <p>19 could be up to criminal penalties.</p> <p>20 Q And did you discuss any of the discrepancies in</p> <p>21 their practices that could result in such penalties?</p> <p>22 A Civil penalties, yes. I didn't see anything in my</p> <p>23 discussions with her or review that would lead to</p> <p>24 criminal level penalties.</p> <p>25 Q How -- based on your I-9 audit at NuStar, how high</p>
<p style="text-align: center;">166</p> <p>1 A I don't recall exactly, but I know -- that's</p> <p>2 normally part of my I-9 review and -- and training.</p> <p>3 Q Um, going back to ICE, if ICE notifies an employer</p> <p>4 that certain employees' information doesn't match</p> <p>5 government's records, would the business have to</p> <p>6 take action in response to that notice?</p> <p>7 MR. BISS: Objection, speculation, inadmissible</p> <p>8 opinion.</p> <p>9 Q (By Ms. Hauser) In your experience?</p> <p>10 A Can you ask the question again?</p> <p>11 MR. BISS: That doesn't -- that doesn't cure</p> <p>12 it.</p> <p>13 A I'm getting a little tired. Can you ask the</p> <p>14 question one more time?</p> <p>15 Q (By Ms. Hauser) Sure. If a business receives notice</p> <p>16 from, following an ICE audit that certain employees</p> <p>17 did not match the government's records, does the</p> <p>18 business have an obligation to take action in</p> <p>19 response?</p> <p>20 MR. BISS: Same objections.</p> <p>21 A Yes, it has a certain amount of time to follow up</p> <p>22 with those employees. Some of them are just due to</p> <p>23 misspellings, um, inaccuracies in the Social</p> <p>24 Security Administration, um, but if the error can't</p> <p>25 be corrected and they can't bring in documents that,</p>	<p style="text-align: center;">168</p> <p>1 was the risk that NuStar would lose workers if ICE</p> <p>2 audited them?</p> <p>3 MR. BISS: Objection, inadmissible opinion.</p> <p>4 A I couldn't speculate as to that, but -- yeah, I</p> <p>5 should not speculate.</p> <p>6 Q (By Ms. Hauser) Did you express to them that there</p> <p>7 was any such risk?</p> <p>8 A Yes.</p> <p>9 MS. HAUSER: Let's take a short break. I'm</p> <p>10 going to check my notes, but I think I might be very</p> <p>11 close to done. So I will go be efficient with my</p> <p>12 colleagues, and we'll come back in like ten minutes.</p> <p>13 THE VIDEOGRAPHER: This ends media unit</p> <p>14 number 4 in the video recorded Zoom deposition of</p> <p>15 Amanda Bahena, to be continued on media unit</p> <p>16 number 5.</p> <p>17 We're going off the record at 3:52 Central</p> <p>18 Time.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: This is media unit number 5</p> <p>21 in the video recorded Zoom deposition of Amanda</p> <p>22 Bahena.</p> <p>23 We're back on the record at 3:58 p.m. Central</p> <p>24 Time.</p> <p>25 Q (By Ms. Hauser) Ms. Bahena, after you completed the</p>

1 I-9 audit for NuStar and sent them the letter, did
2 you continue to counsel them on immigration issues?
3 **A No.**
4 Q Did you hear from anyone at NuStar again after the
5 audit otherwise?
6 **A Not that I recall.**
7 Q Um, did you communicate with anyone at NuStar when
8 you received a subpoena for documents in this
9 lawsuit?
10 **A I don't think so.**
11 Q Did NuStar ever seek your advice concerning no-match
12 letters from the U.S. Social Security
13 Administration?
14 **A No.**
15 Q Did you speak to Anthony Nunes, Jr., who is
16 Mrs. Nunes' father-in-law, at all when you visited
17 NuStar?
18 **A I think about five minutes. He was clearly working**
19 **on the dairy. And he came in and said hello. Um, I**
20 **don't -- I don't remember exactly what we talked**
21 **about, um, but he was more just friendly, "Thank you**
22 **for coming," um, and then left. But I -- not very**
23 **much at all.**
24 Q Did you meet with Mrs. Toni Dian Nunes when you
25 visited the farm?

1 **A I don't even know who that is.**
2 Q That is Lori's mother-in-law.
3 **A No.**
4 Q Did you meet with anyone else at the farm while you
5 were there?
6 **A No. It was just, um, Lori, and then her husband**
7 **came in, Anthony Nunes the Third, um, for a short**
8 **time, and we chatted. And I think while I was**
9 **chatting with him, um, Mr. Anthony Nunes, Jr. came**
10 **in and said hello, and then I think -- was just in**
11 **the middle of doing some chores.**
12 Q Um, other than the testimony you've already given
13 today, do you recall any other conversations you had
14 with any of the Nunes's while you were at the farm?
15 **A No. I mean, only what it was like to move to Iowa,**
16 **and, um, she told me maybe -- like they told me a**
17 **little bit about their kids and things, just**
18 **personal type, um, conversations.**
19 Q And other than what you've already testified about
20 today, did you give any other advice to NuStar about
21 immigration risk at the farm?
22 **A Other than what I talked about today, no, not that I**
23 **recall.**
24 Q Um, did NuStar ask any other questions of you other
25 than what we've already talked about today?

1 **A Not that I recall.**
2 Q I have no further questions.
3 EXAMINATION
4 BY MR. BISS:
5 Q Amanda, I've just got a couple of questions. Good
6 afternoon. Or is it late evening now? The sun has
7 gone down here in Charlottesville, Virginia. I
8 didn't think that I had the energy to get through
9 this deposition, but I did, I found the energy and I
10 found the strength. And I have just a couple of
11 questions.
12 Um, the conversations that you testified about
13 concerning the risks of an ICE audit, those were
14 general conversations about the risks of an ICE
15 audit; they didn't pertain to any particular
16 employee at NuStar, correct?
17 **A Correct.**
18 MS. HAUSER: Objection.
19 Q (By Mr. Biss) Okay. And then -- and then my last
20 question -- there might be two or three, because
21 that's how it goes sometimes. During today's
22 deposition you were shown, I'm going to say
23 hundreds; it probably wasn't hundreds but it was a
24 lot of documents, including the letter that you
25 authored dated October 12 and an invoice dated

1 November 13 that no doubt you authorized to be
2 delivered to your client. But in not one of those
3 documents and in not one of the questions that my
4 colleague, Counsel for the Defendants, asked you
5 today, did the name Devin Nunes ever come up. Do
6 you remember hearing the name Devin Nunes today?
7 **A No.**
8 Q Do you remember seeing his name on any document that
9 you were shown today?
10 **A No.**
11 Q And this is true, isn't it: During the 2018 audit,
12 um, Devin Nunes' name never came up once, correct?
13 **A That is not correct.**
14 Q Okay. So when did his name come up?
15 **A Hmm, I don't recall, but I -- I don't recall the**
16 **exact context. It wasn't in the case of the dairy**
17 **and stuff. It was more like family --**
18 Q Okay.
19 **A -- personal stuff.**
20 Q So it -- so it had nothing to do with the dairy?
21 **A No, it didn't, not with his involvement or the dairy**
22 **or the I-9s. It was just -- I may have asked out of**
23 **curiosity.**
24 Q Okay. Now, you know who Devin Nunes is, right?
25 **A Yes.**

<p style="text-align: center;">173</p> <p>1 Q And when you went to the dairy on October 8th, you</p> <p>2 knew who Devin Nunes was, correct?</p> <p>3 A Yes.</p> <p>4 Q You knew that he was a congressman, correct?</p> <p>5 A Yes.</p> <p>6 Q Did you know that he was, um, Anthony -- did you</p> <p>7 know that he was Lori's brother-in-law?</p> <p>8 A Yes.</p> <p>9 Q And how did you know that?</p> <p>10 A From the article.</p> <p>11 Q Is that the only source of information as to who</p> <p>12 Devin Nunes was and how he was related to Lori and</p> <p>13 the Nunes's in Sibley, Iowa?</p> <p>14 A To my recollection, yes.</p> <p>15 Q Other than, um, other than a casual mention of Devin</p> <p>16 Nunes being related to Lori Nunes and Anthony,</p> <p>17 Junior and Anthony the Third, this is true, isn't</p> <p>18 it, Devin Nunes' name didn't come up at all?</p> <p>19 A Correct.</p> <p>20 Q Okay. Amanda, I don't have the energy to ask you a</p> <p>21 single other question. So I thank you for your</p> <p>22 time.</p> <p>23 MS. HAUSER: I just have one, if you'll indulge</p> <p>24 me, just to clarify the record.</p> <p>25 * * * * *</p>	<p style="text-align: center;">175</p> <p>1 We're going off the record at 4:06 p.m. Central</p> <p>2 Time.</p> <p>3 MR. BISS: No orders. Thank you.</p> <p>4 THE COURT REPORTER: Would you like to order</p> <p>5 the transcript.</p> <p>6 MS. HAUSER: Yes, rough today or tomorrow.</p> <p>7 MR. BOYER: Two weeks is fine on the final.</p> <p>8 THE COURT REPORTER: Would you like her to read</p> <p>9 the transcript?</p> <p>10 MR. HUFF: I advise them to waive reading and</p> <p>11 signing.</p> <p>12 THE COURT REPORTER: And would you like to</p> <p>13 order the transcript?</p> <p>14 MR. HUFF: Yes.</p> <p>15 * * * * *</p> <p>16 (The deposition concluded at 4:06 p.m. Central</p> <p>17 Time, February 22, 2022.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">174</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MS. HAUSER:</p> <p>3 Q Mr. Biss asked you if Mr. Devin Nunes' name was on</p> <p>4 any of the documents you were shown today, and I</p> <p>5 just want to clarify that you did see a couple of</p> <p>6 news articles as exhibits and was Mr. Devin Nunes'</p> <p>7 name mentioned in those exhibits?</p> <p>8 A Yes. Thank you. They were in the news articles</p> <p>9 that were exhibits.</p> <p>10 Q No further questions.</p> <p>11 THE VIDEOGRAPHER: Okay.</p> <p>12 Um, while we're on the record we've just got to</p> <p>13 get orders, so I'll let Cindy go first.</p> <p>14 MS. HAUSER: Ms. Bahena --</p> <p>15 THE COURT REPORTER: Excuse me. I just --</p> <p>16 MS. HAUSER: -- you are excused.</p> <p>17 We are off the --</p> <p>18 MR. BISS: Okay, so -- so --</p> <p>19 THE COURT REPORTER: Excuse me. The</p> <p>20 videographer has to go off the record first.</p> <p>21 MR. BISS: All right, let's go off the record</p> <p>22 then. We can do this off the record.</p> <p>23 THE VIDEOGRAPHER: This ends media unit</p> <p>24 number 5 and concludes today's video recorded Zoom</p> <p>25 deposition of Amanda Bahena.</p>	<p style="text-align: center;">176</p> <p>1 CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC</p> <p>2 STATE OF SOUTH DAKOTA)</p> <p>3 COUNTY OF PENNINGTON) ss.</p> <p>4 I, Cindy K. Pfingston, a Registered</p> <p>5 Professional Reporter and Notary Public in and for</p> <p>6 the County of Pennington, State of South Dakota,</p> <p>7 DO HEREBY CERTIFY that on the 22nd day of</p> <p>8 February, 2022, there appeared before me pursuant to</p> <p>9 Notice and/or Stipulation</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>